

R E P O R T

FROM THE

SELECT COMMITTEE

APPOINTED



TO INQUIRE INTO THE STATE OF THE

PREROGATIVE AND ECCLESIASTICAL
COURTS IN IRELAND;

WITH THE

MINUTES OF EVIDENCE,
AND APPENDIX.

Ordered, by The House of Commons, to be Printed,
22 June 1837.

Martis, 4^a die Aprilis, 1837.

Ordered, THAT a Select Committee be appointed to inquire into the state of the Prerogative and Ecclesiastical Courts in Ireland, and to consider the Reports of the Commissioners appointed to inquire into the state of these Courts in 1816 and 1830:—And that the Committee do consist of—

Mr. Winston Barron.	Mr. Lynch.
Mr. Attorney General for Ireland.	Mr. Fitzstephen French.
Mr. Serjeant Jackson.	Mr. Hamilton.
Dr. Lushington.	Lord Viscount Clements.
Mr. Lefroy.	Mr. Villiers Stuart.
Mr. O'Connell.	Mr. John Young.
Mr. Serjeant Ball.	Mr. Lucas.
Mr. West.	

Ordered, THAT the said Committee have power to send for Persons, Papers and Records; and that Five be the Quorum.

Ordered, THAT Mr. Serjeant Jackson be discharged from further attendance, and that Dr. Nicholl be added.

Jovis, 22^a die Junii, 1837.

Ordered, THAT the Committee have power to report the Minutes of the Evidence taken before them to The House.

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R E P O R T.

THE SELECT COMMITTEE appointed to inquire into the STATE of the PREROGATIVE and ECCLESIASTICAL COURTS in *Ireland*, and to consider the REPORTS of the COMMISSIONERS appointed to inquire into the State of these Courts in 1826 and 1830; and who were empowered to report the MINUTES OF THE EVIDENCE taken before them to The HOUSE:—

HAVE examined several Witnesses, and have agreed to report the Evidence given by them to The House.

22 June 1837.

 PROCEEDINGS OF THE COMMITTEE.

Jouis, 13^e die Aprilis, 1837.

MEMBERS PRESENT:

Mr. W. Barron.
Mr. Villiers Stuart.
Mr. Serjeant Ball.

Mr. Lucas.
Mr. West.

Mr. BARRON called to the Chair.

Adjourned till 27 April, at Twelve o'clock.

Jouis, 27^e die Aprilis, 1837.

MEMBERS PRESENT:

Mr. W. Barron.

Mr. Hamilton.

Adjourned till To-morrow, at Twelve o'clock.

Jouis, 1^e die Junii, 1837.

PRESENT:

Mr. Lucas.

Adjourned till Monday, 5 June, One o'clock.

Luas, 5^e die Junii, 1837.

MEMBERS PRESENT:

Mr. BARRON in the Chair.

Mr. Villiers Stuart.

Mr. Lucas.

Adjourned till Wednesday, at One o'clock.

 LIST OF WITNESSES.

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MINUTES OF EVIDENCE.

Veneris, 26^a die Aprilis, 1837.

MEMBERS PRESENT.

Mr. Villiers Stuart.
Mr. Hamilton.

Mr. West.
Mr. Petrich.

MR. WINSTON BARRON IN THE CHAIR.

Daniel Webb Webber, Esq., called in; and Examined.

1. *Chairman.*] YOU are a barrister?—Yes, and King's counsel; I did attend the bar.

2. You were in your early days a practising barrister?—I was; I have not been in practice these 20 years.

3. You were one of the Commissioners appointed to inquire into the law courts in Ireland, the duties, salaries and emoluments of the officers?—It was offered to me when the Commission was appointed in the year 1815.

4. Were you actually a member?—I was chairman of the board.

5. The Committee have been given to understand that you attended the board very regularly?—I did during the whole of the session, except for some time that I was confined by a fever.

6. During how many years?—It was established in the year 1815, and it was the year 1828 when I ceased to be a member of it.

7. Therefore you were 13 years a member of the board?—Yes, and it continued for three years and a half afterwards.

8. But you withdrew in 1828?—No, I did not; I ceased to be a member; after that, it was not more than from two to four years' duration at the farthest.

9. To what do you attribute the length of time which it took to make your inquiries?—It proved a much more complicated and extensive inquiry than any one contemplated; it was not so easy to extract the information (which used frequently to be of a criminating nature) that it was desirous to extract, and there were frequent changes of the members of the board, which also impeded our progress.

10. You were one of those who, from the very beginning, if I am rightly informed, devoted your whole attention to this subject?—When I was first appointed to it, I attended as regularly as I could; but as soon as I became chairman, I devoted my entire attention to it; I withdrew myself from the circuit to which I had returned, and in which, after four years and a half of illness, I found my situation the same as it had previously been, which was beyond any one of my contemporaries, and I devoted myself entirely to the business of the board.

11. During the course of the sittings of the boards, and whilst you were a member of it, the Prerogative and Ecclesiastical Courts of course came under your cognizance?—As chairman of the board, it was my constant habit to attend before the meetings of the board, and to continue after it had broken up, to arrange for the business of the following day, and a great deal of the waste of time arose from some of the members being employed in the court, and not coming until a late hour, by which often half a day was consumed; and from another gentleman, a Commissioner of Bankrupts, going usually at three o'clock, which caused our board to break up; but for my own part, unless impeded by illness, I was there every day before the appointed hour, and generally stayed afterwards to make arrangements for the future business, and I did the business of preparing reports during the evening, and often until late at night.

*Daniel W. Webber,
Esq.*

28 April 1837.

David W. Webster,
Esq.

28 April 1837.

12. Did the Prerogative and Ecclesiastical Courts' Inquiry come under your cognizance during the time of your remaining at the board?—In a partial manner only. The practice of the board was to send out documents containing interrogatories to the persons to be examined, to which interrogatories they gave, in the first instance, written answers, which were intended to form the basis of a *vide* voce examination afterwards. So far as that, we had it before us many times.

13. Were these questions drawn up under your directions or by you?—It was generally a precept, containing a number of general interrogatories which had been previously adjusted at the board, printed, and these, which were termed precepts, signed by the members, were sent to the persons along with the summons to attend, in order that they might have information of the general nature of the questions to be asked.

14. You were chairman when these questions were sent out?—I was not chairman at the time these questions were adjusted; Sir Charles Saxton was; I then became chairman of the board, and continued so until I ceased to be a member altogether.

15. You said you were only partially cognizant of the inquiry that took place into the Prerogative and Ecclesiastical Courts; will you explain that?—In the first place, I was cognizant as far as the returns to these general questions, as I looked into them when they came back to the board; and in the next place, I was entirely cognizant of that part of the Report which relates to the office of judge of the Prerogative, for our attention was directed to that by Government, for a particular object which Government then had in view; that I was entirely cognizant of; and it was that only, and the *vide* voce examination relating to it, that I had an opportunity of being present at.

16. You told us at the commencement that you were a member of the board during 13 years; will you have the goodness to tell us what led to your retirement?—A very extraordinary circumstance, which you will allow me to explain myself. I mentioned that the members were frequently changed, which caused great interruption to the board, and very great uneasiness to me, as I felt myself, from being the chairman, peculiarly responsible. On the occasion of the death of one of these gentlemen, who indeed was very incompetent at the time, having been a very old man, I went to the Castle, at the time of the recess of the board, to speak of a successor, to urge that some person who could give me effectual assistance should be the person appointed. Mr. Gregory, the Under Secretary, told me that he had recommended to Lord Anglessea not to appoint the fifth member, inasmuch as it was expected the board would shortly cease, and it would save the public so much expense. My answer to that was, that it was impossible to go on with the board, except by having an unequal number; for that in business of so little a routine nature, differences frequently arose, and as chairman, I had not a casting voice; it was necessary to have an unequal number, and that could only be accomplished either by adding the fifth member or taking one away. The Under Secretary informed me, that the question was then before Mr. Peel, who was Secretary for the Home Department. I had known Mr. Peel personally; he was the person who offered me the situation, and as it was the time of the recess, I came over to England particularly for the purpose of inducing him to appoint a person that could assist me usefully in the remaining business of the board. He was at Brighton; I followed him down to Brighton; explained to him what I have now explained to you, and mentioned to him what I had before mentioned to Lord Wellesley, with whom I had a more familiar intercourse; that if the Government wished the business should be carried on by a diminution of members, there was no mode of doing that except by taking away one; and as we were going into an examination of the Ecclesiastical Courts, I should be extremely willing to make way for a civilian being put into my situation; but I thought it reasonable, at the same time, that that should not be done without putting me in a situation that would compensate me for having given up so much of my time, and sacrificed so much to my situation at the board.

17. By "civilian," what am I to understand in this instance?—A person perfectly cognizant of, and who practises in the Ecclesiastical Courts.

18. Then what arose from that?—The Secretary for the Home Department said, that it would lie with Lord Leveson Gower, the Secretary for Ireland, but he suggested nothing at all. So far from my having thought of resigning my situation

situation, except under the terms I have mentioned, I particularly mentioned, that if he gave me a person who could give me effectual assistance, I would undertake to finish the entire remaining business of the board in two years; whereas it took three years and a half to go on with this one court, and courts were left behind and never examined into, which would take at least as much time longer. If I had had an effective assistant, I would have undertaken to do the entire business in two years, which is the opposite of an offer to resign. Being referred then to the Secretary for Ireland, at Dublin, I immediately, on commencing business with the board, waited upon the secretary at the Castle; I told him how I was circumstanced, and urged him to appoint the other member as soon as possible, that we might proceed in the further examination of the Ecclesiastical Courts; he said that the subject was then before the Secretary for the Home Department. After some further time I went again, and laid before him, at the desire of the then Attorney-General, a scheme of arrangement of some business which he thought would greatly benefit the subjects that we had already examined, and I was requested by him to make a memorial of it, which I did; I merely mention this to show how little it was in the contemplation either of the secretary or myself that I was making a resignation of my office. A very little time after that one of the members of the board came to me, and told me that it was intended to put a person in my place, considering that I had resigned; I immediately went to the Secretary of State for the Home Department, at the Castle, to mention how little I had given reason for that; and to remind him, that so far from that, I had suggested, on hearing that the board was about to be dissolved, that as I was then about to take a house in Merrion-square, if that were to be the case, I should not do it, but if the board was to be continued I would proceed in purchasing the house in Merrion-square, which I did afterwards purchase. He told me that he knew nothing of the intention of dissolving the board; and I did purchase the house, which I lost money upon; and it was some weeks after that that a person came to me, and told me that I was to be displaced.

19. An official person?—A member of the board. I went to Lord Leveson Gower; he seemed a little embarrassed; I reminded him of what had passed; that I never had, directly or indirectly, expressed such an intention, and I presumed that he would recall any intention he might have of putting another in my situation. I reminded him, that so far from making any resignation on my asking respecting the intended dissolution of the board, I stated, that if it was not to be reduced I would proceed in the purchase of the house; and I urged the appointment of the other member, in order that I might proceed effectually with the business, which of course was totally inconsistent with an intention to resign; as opposite as possible.

20. What took place after that?—He hesitated, and seemed very much embarrassed; I went away, and wrote to Mr. Peel, and got no satisfactory answer. I came over to England, and made an application to him; he declined seeing me, although I had been on terms of acquaintance before, for I had often dined at his house, and he was particularly attentive to me; but a gentleman was placed in my situation, Mr. Kemyss.

21. Are the Committee to understand that another gentleman was placed in your situation contrary to your own wishes?—Contrary to my express expostulation against it.

22. Was there any fault or error found with you?—I mentioned that it was impossible for me to see the transaction in any other light than as a dismissal; I required that, if there was any ground of complaint whatever against me, it should be stated to me, as I felt conscious that I could disprove it; that I should be quite glad to put my remaining at the board, or withdrawing from it, entirely on the fact of my having discharged a duty most diligently and zealously.

23. Mr. Villiers Stuart.] Was there a fifth member added to the board after your retirement?—There was.

24. Chairman.] So that I am to understand, that in place of what you recommended, having the board reduced to three persons, an additional member was added to the board, not only in your place, but in place of the other vacancy which was then open at the time you retired; it was, in fact, kept up to five persons?—Yes.

25. Mr. Hamilton.] You resigned, on the understanding that an additional member should be appointed in your place?—No, I did not resign at all; on the contrary, I protested against resigning, but I said, "If you wish to reduce the board

Daniel W. Webber,
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board to three, I shall be willing to make way for a person in my place, or you may put a person in my place who is a civilian; but if you do that, I shall expect to be put in a situation which will be a compensation to me."

26. Then you were superseded, in point of fact?—In point of fact, I was superseded against my consent, and an additional member appointed.

27. Were either or both of the new members civilians, as you call them?—Neither.

28. *Chairman.*] Who were the two new members?—The two new members were Mark Saurin, who was the person I particularly wished to be appointed, and the person put in my place was Mr. Kemys, assistant-barrister of the Queen's county; I gave up my circuit, where I had considerable business, to confine myself to the business of the board, whilst Mr. Kemys retained his situation of assistant-barrister and his attendance in court.

29. *Mr. Hamilton.*] Were you required to resign your circuit, or did it arise from the multiplicity of your duties?—It was mentioned to me, and I did resign to have the situation I was in; and my doing so was made the ground of suggesting that to other persons, particularly Chief Justice Doherty, who was obliged to resign his circuit under the example that I had resigned mine.

30. Was he at any time a member of this board?—He was; Mr. Leslie Foster was also a member of it.

31. Was any explanation at any period given to you by any one connected with the Government, as to the reason for having superseded you in the manner you have stated?—Lord Leveson Gower mentioned that I had resigned; that they understood me to have resigned. I reminded him before that I told him it was all before Mr. Peel, the Secretary of State for the Home Department. I must mention, that I never said a word about resigning further than this, "If you want to take away one, I shall be willing to make way for a civilian."

32. *Chairman.*] Is there any further explanation which you think necessary?—No; I did expostulate, but it was in vain.

Luna, 1^{re} die Maii, 1837.

MEMBERS PRESENT.

Mr. Villiers Stuart.
Mr. West.

Mr. Lucas.
Mr. Hamilton.

MR. WINSTON BARRON IN THE CHAIR.

1 May 1837.

THE CHAIRMAN informed the Committee that he had received letters from Lord Morpeth and Judge Radcliffe, which were read, and ordered to be inserted in the Minutes, as follows:

My dear Lord,

House-street, 27 March 1837.

AS the recess has arrived, I trouble you with the accompanying Statement (containing a suggestion), which has the Primate's approval. I am still in some degree labouring under the effects of an illness I had last October, and which probably would have been quickly removed, had it not been for the exertions I felt myself bound to make to avoid any inconvenience to the public from my non-attendance to the duties of my office, which must be continued, even in the vacations. I had suffered at times before from similar exertions, which were not so dangerous to me when a younger person; but I have been very nearly 21 years in my office, from which I have no wish to retire, being still able to work. I hope your Lordship will excuse the trouble I give, and if you think my suggestions unreasonable, that you will forget them; and I think your mind ought to be satisfied that the public has an interest in the matter, without much attention to the case of an individual, whose age would probably not permit him long to continue in office.

I have the honour to be

Your Lordship's obedient and faithful Servant,

Right hon. Viscount Morpeth, &c. &c.

John Radcliffe.

KING JAMES I. being empowered to do so by the Irish Statutes 28 Hen. VIII., c. 19, and 2 Elizabeth, c. 1, by his letters patent, made in the twentieth year of his reign, granted the jurisdiction of the Prerogative Court, and of the Court of Faculties, then distinct and separate, to the then Archbishop of Armagh and his successors for ever.

King Charles I. by his letters patent, made in the second year of his reign, empowered the archbishops to appoint permanent deputies or commissioners of the respective courts to exercise the several jurisdictions, and to grant the offices for terms of the lives of the respective commissioners, or during their good behaviour.

But those letters patent, which are also conversant of the office of registrar of these several courts, contained a proviso, "that the offices to be granted by the patentees shall be granted to be exercised by the officers themselves in person, and not by any deputy or substitute whatsoever."

This proviso, though subsequently relaxed as to the office of registrar, by patent 8 Charles I., remains in full force, as to the office of commissary, and is set forth in every appointment of a commissary.

The practice has strictly acceded with the proviso, and in no instance has any commissary taken upon himself to appoint a deputy or surrogate to supply his place in either court.

Much public inconvenience arose at various times (long before the business increased to its present extent) from the temporary illnesses or absences of the commissaries, by reason that, in consequence of that proviso no caveat could be warned or removed, nor any limited or special administration to substantiate suits at law or equity, or *pendente lite*, be granted, nor judicial act or rule done or sped, but by and before the commissary in person; and it often occurred that caveats were entered against the grant of probates or administrations to deceased persons by debtors to their assets in order to delay proceedings for recovery of the debts. It is easy to conceive the mischief and confusion likely to follow the unreasonable delay of the representation to a deceased person in a Court of Probate, which ought to be continually open, not only for the decision of legal questions, but for the protection and preservation of rights and property pending litigation.

If the illness of the commissary should be of an infectious nature, or otherwise debarring the access to him of the registrar or practitioners of the Court of Prerogative, the business of the departments must be wholly stopped, at a time, perhaps, when Parliament might not be sitting to provide a remedy. The introduction of that proviso is not easily to be accounted for, when it is considered that one great object of the patent of Charles I. was to assimilate as nearly as could be the office of Judge or Commissary of the King's Court of Prerogative in Ireland to that of the Judge or Commissary of the Prerogative Court of Canterbury.

At that time the Judges of both the Prerogative Courts of Canterbury and York were empowered, as they now are, to appoint surrogates to exercise their offices in their illnesses, or necessary absence. So in like manner the chancellors of dioceses may grant commissions of surrogacy. Every senechal, assistant barrister, and recorder may have deputies in the like emergencies; one Master in Chancery can act for another, and one Judge of a superior court can supply the place of another; the business of the Master of the Rolls can be done by the Chancellor, whose functions can be cast upon others in his illness or absence.

The Judge of the Prerogative is the only officer whose jurisdiction ought to be in constant exercise, that cannot have it performed when necessity requires by a deputy or substitute of some sort. He is expected to be always able to act in person, in despite of illness, domestic calamities or urgent causes for his absence; for a Court of Probate (as has been observed) can never be closed, and his jurisdiction extends over the whole of Ireland, including even the Province of Armagh.

Though the courts were distinct, the office of commissary of each had been, as is believed, always granted to the same person. The office of Commissary of the Court of Faculties was almost a sinecure, though it was nearly as lucrative as that of Commissary of the Prerogative, which court requires such constant attention.

By the 40th Geo. III., c. 69, Irish, the King is enabled to grant to any person who shall have resigned the office of Judge of the Court of Prerogative, after a service of 15 years, or being afflicted with a permanent infirmity, disabling him from performing its duties, a pension of the then currency of Ireland of 1,000*l.*, being 923*l.* 1*s.* 6*d.* of the present currency; but no retiring pension was attached to the office of Commissary of Faculties, which had no active duties, and could have been held and enjoyed notwithstanding the resignation of the office of Judge of the Prerogative by the person who had been appointed to both offices.

Thus matters remained until the Act 7 & 8 Geo. 4. was passed, whereby the offices of Commissary of the Court of Prerogative and of the Court of Faculties were consolidated into one office. The officer was prevented from practising or doing any business as a barrister or advocate, or from taking office fees, and was allowed instead a salary of 3,000*l.* a year of the present currency from the Consolidated Fund. But no addition was made to the retiring pension which had been annexed to the office of Commissary of the Prerogative alone, the resignation whereof, after the consolidation, will necessarily effect the resignation of the office of Commissary of Faculties. So that the retiring allowance which may be granted to the resigning commissary cannot amount to one-third of the salary of 3,000*l.*

These matters are noticed, not with the view to any increase of the retiring pension, but to show the injustice of the proviso; the effect of which is to disable the commissary, if attacked by temporary illness, from having that quiet, rest from business, and change of

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suit and place that might be considered necessary, in order to prevent that temporary illness from becoming a permanent and disabling infirmity, inducing his resignation, and consequent loss of two-thirds of the income he was accustomed to receive.

It is therefore submitted, that as well for the sake of the individual commissaries as the public, some relaxation of the proviso should be made in time, by enabling the commissary in his illness, or unavoidable absence, to (at his own expense) grant commissions of surrogacy, in like manner and with the like limitations and restrictions as has been used and lawfully may be done by the Judges or Commissaries of the Prerogative Court of Canterbury, and not otherwise.

The present judge, or commissary, was appointed in May 1816, and has the satisfaction to state that the public have never been inconvenienced or delayed in consequence of his illness or absence. But his successors may not be so well able to bear the confinement to Dublin at all seasons of the year, and the nature of their illnesses may be such as not to admit of their transacting business whilst labouring under them.

This matter was under the consideration of Lord Hatherton, when Secretary for Ireland, who, it is believed, desired the then Attorney-General to prepare a clause to relax the proviso contained in the patent of second year of King Charles I.

It is submitted that the object may be effected either by Parliament or by a short patent, relaxing that proviso, if the Primate accepts it.

See the 14th Report of the Commissioners for Inquiring into Fees, &c. in Ireland; and Supplement to the 15th.

Daniel Webb Webber, Esq., called in; and further Examined.

*Daniel W. Webber,
Esq.*

33. *Chairman.*] YOU have, since your last examination, been directed to refresh your memory from the 19th Report?—I have.

34. Does any thing occur to you in that report with regard to the office of registrar?—That is a question rather more general than I should find it easy to answer.

35. Have you turned your attention to the appointment of the deputy registrar in this court?—Yes, the Report was put into my hands, and it appeared to me, that allowing the power to the registrar to appoint a deputy would have various objections connected with it, but that it might not only be advisable, but necessary, to have power somewhere, and that that power should most safely be lodged in the Judge for an occasional appointment, perhaps sometimes *pro Ad e vice*.

36. Have you read the oath that Mr. Hawkins states he took as registrar in this court?—Yes, I have read the oath; it appears to have been of recent administration; and it appeared to me very vague and inadequate, if there was any necessity for administering an oath at all; the words will speak for themselves.

37. Have you directed your attention to the fees of apprentices in these courts?—To the general regulations respecting them, as well as to the fees. I have not only directed my attention since I have seen the report, but it had been the subject of representation made to me as chairman of the board.

38. And particularly the apprentice fees?—Particularly respecting the regulations as to taking apprentices, and the fees exacted.

39. What was the result of the investigation, or of your consideration on that point; the evils of it?—It appeared to me very uncommon, and I could not devise any excusable grounds for limiting the power of taking apprentices to the registrar. It appeared to me, in analogy to the courts of law, that it would have been a more natural regulation to have limited it to the proctors, certainly extending to them or some of them. Among different objections that occurred to me upon the subject, one was, the power of extortion given to a single officer who was competent to take apprentices.

40. And do you think it had this objection, of creating a species of monopoly?—It was in itself a monopoly, and a monopoly that I thought led to injurious objectionable effects.

41. Do you happen to recollect any of these special objections?—I thought the registrar not so likely to be able to give the instructions necessary to form the practitioner, as the practitioner in whose offices the business was more immediately carried on. I conceived that the registrar ought not to be allowed to be a practitioner in the court, and that therefore he would so far be incompetent to give an opportunity of gaining the necessary knowledge for being a practitioner; that that should be limited to the proctors themselves, and perhaps to a selection of the proctors; and that the number of practising proctors also should be limited; for it occurred to me that if the mode was changed, and the power of taking apprentices was conferred on the proctors themselves instead of the registrar alone, it might

might have the effect of multiplying, inconveniently and injuriously for the public interest, the number of these adventurous practitioners.

42. Do I rightly understand you, that you would wish the proctors to take apprentices, instead of the present practice of having the registrar take apprentices?—What would occur to me, would be to have the right of taking apprentices transferred from the registrar to the proctors, and that it would be advisable to have a limited number of these proctors for taking apprentices, rather than conferring it upon the whole body, as it would prevent the number being mischievously increased,—unnecessarily at least increased; and by limiting it to persons of experience and character have the effect of a better and safer training for the young men.

43. You consider the proportion of fees taken by this officer for his own private remuneration as unreasonable?—I considered that, in analogy to what had occurred in the examination of the Board of Law Inquiry in Ireland respecting other sinecure offices in the law courts, and I think in general the remuneration to the officers there was greater than it was in some of them, less than it was in that of Remembrancer of the Court of Exchequer, where the unparalleled liberality of Lord Wellesley gave the deputy more than the principal had himself; he had 26 of the most profitable fees out of about 50 of the office.

44. You directed your attention to the clerk's fees in the registrar's office?—It is generally mentioned in the reports; in all the law offices where the clerk and the prothonotary were allowed to take fees, exaction appeared to have arisen from it, some of very enormous extortion, and to have raised the fees of clerk in some instances, to that of very great emolument, about 2,000*l.* a year, in some instances; and also to have put the business of the suitors very much in their power, from which it appeared exactions frequently had arisen.

45. You are speaking now from analogy, drawn from your examination into the other courts of law in Ireland?—Not having been present at the examination on Ecclesiastical Courts, I speak from what has appeared upon the subject arising out of the examination of similar offices in the law courts.

46. Mr. *Villiers Stuart*.] You are not acquainted with this particular law court yourself?—Not at all. I mentioned that I never practised in it, and the *vind* *voce* examination took place since I left the board; I was no further acquainted with the constitution of this court than by reading written documents respecting the court, which the board was furnished with before I left the board.

47. Will you please to state any objections that arise in your mind as to the system pursued in the deputy registrar's office?—As to the office of registrar, as practically exercised, I do conceive the greatest objection arose from his being the taxing officer of the costs and being himself a practitioner; and I must add to that, that the manner in which the duty of taxation of costs has been exercised, generally, has been the source and support of almost all the pecuniary abuses of courts of justice; that that does require regulation in this court as well as in the other courts, I cannot doubt. A change did take place as to the taxation of costs in law courts; I was the person who recommended that, and who suggested the subject and the regulations that were submitted to Government and partially adopted; and I think it is possible an examination on that subject might be more useful than on any other.

48. Who suggested the change as to taxation of costs?—It occurred to me. The recommendation which had been given, and which has been partially acted upon, arose in the courts of equity, to which it has not been applied, viz. that the taxation of costs should be taken from the masters in Chancery or prothonotaries in the courts of common law, and vested either in an individual, specially appointed for the purpose, or, what appeared to me more advisable, that it should be vested in something of a tribunal, in which, by a succession of members, uniformity of system would be preserved, rather than in a single individual officer succeeding without having had a previous intercourse with the officer to whom he had succeeded. I give a general answer, comprising this court and the other also, for it was from the others the system was first introduced, and the opinion now given was founded.

49. Was that the recommendation you made to the Government, when inquiring into these courts?—The recommendation was made in the Report on the Court of Chancery, and it was applied afterwards to the courts of common law; it was not adopted as to the Court of Chancery, where the grievance was tenfold or

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one-hundred-fold greater than in the courts of law, but it was adopted in the courts of law, having been found to be practically very useful; but the great abuses were in the courts of equity, which were enormous.

50. Mr. West.] Was it part of your recommendation that the costs of the Ecclesiastical Courts should be taxed by the board you speak of?—No, we did not go into the Ecclesiastical Courts; the recommendation was confined to those courts that we were then reporting upon, viz. the equity courts, and afterwards the law courts.

51. Is it your impression now, from what you understand of these courts, that the costs in the Ecclesiastical Courts should come within the recommendation?—They stand, in my judgment, precisely on the same reason.

52. Is it your recommendation that they should be taxed by the same tribunal?—Yes, I think the same tribunal would be perfectly competent to the taxation of these costs.

53. You know the taxing officer in the law courts; the only case in which it has been carried into effect was where both were barristers; was that part of your recommendation?—Certainly.

54. You know that those barristers were never practitioners in the Ecclesiastical Courts?—I know they were not.

55. Do you consider that a tribunal constituted in that way, never having had any experience in the practice of the Ecclesiastical Court, would be competent to decide in cases of wills, or to tax the costs?—I conceive that when persons were appointed to the office, if competent to the consideration of the subject in other offices, they would take some trouble to make themselves competent for this particular court, or it would be advisable in the constitution of such a board to have a member who had been used to practise in the Ecclesiastical Courts. At the same time, from what I recollect of practice in other courts, I am not at all of opinion that previous experience of practice as an advocate would give a man particular competency upon the subject; he would have to learn, but would come to that learning with a mind more prepared than a person who had not been a practitioner at all. The instances in the equity courts were far beyond what had been conceived. I remember where a family found itself ruined by the extent of such costs. The part of the recommendation which I conceive to be the most useful, was, that there should be an annual taxation of costs in all cases, as well as applying to particular existing costs, in order to check the enormous accumulation of costs (which did operate to the perfect ruin of families in one or two cases), as far as the progress of an equity suit would allow. By that means, persons who had involved themselves in litigation would see what proportion the progress of the expense bore to their means of supporting it. As I mentioned, there have been instances where the expenses were made far to exceed the object contended for. I conceive that that might have been prevented without any expense falling upon the Government of the country, and with a diminution of expense to the suitors, by the taxation enjoined being made annual, and subject only to the fees which by the illusory taxation were always paid; that that would make a fee fund, which would give ample remuneration to the persons to whom the duty should be exclusively confided, in exclusion of any other occupation.

56. Is it part of your plan that there should be more than one taxing officer in that tribunal?—My meaning was a tribunal rather than a single taxing officer, for this reason, that illness of the officer, or any occasional impediment to his attendance, would not impede the business; but more because if the business were lodged in a tribunal, the succession of members being occasional, would not interfere with the uniformity of the system.

57. Then it was to be a tribunal of several members, and all acting together?—Three or five acting at the same time, and communicating where there was any difficult point on which their opinions might be required.

58. That is, that each Master was to tax a separate bill of costs?—Yes; a great part, after a little time, would be mere routine; and then any particular point which had a difficulty in it might be referred to the whole; nothing can be suggested in the way of a system to correct pre-existing abuses that will not be liable to possible objections.

59. If it were a joint tribunal, would such tribunal get through the business, if it had the business of all the courts to tax?—I would make separate taxing officers, acting together, and communicating in difficulties.

60. Mr.

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60. Mr. *Villiers Stuart*.] What number of taxing officers are there now?—There are now two for the law courts; none have been established for the courts of equity, the abuses in which were what first suggested the system which I was the person who did suggest; there it has not been established, and there it is impossible the Master can discharge the duty with due attention, from the examples that came before us of the enormous bills of costs that were to be taxed; but this system, that I mentioned in my examination now, would not have the same difficulty attendant on it, inasmuch as it is part of the scheme that I suggested that the taxation of costs should be annual; then they would not amount to that immense mass, which, as I mentioned, in one instance rose to a height not less than that (about two feet).

61. Mr. *West*.] Your recommendation has not been adopted by the courts of equity?—No, it has only been adopted in the courts of law.

62. Not having been adopted with respect to the Ecclesiastical Courts, can you, with respect to these particular courts, suggest any other plan of taxation in preference to leaving it in the hands of the registrar?—I can suggest no other, except appointing to this court, as well as other courts, a particular taxing officer; I think the business of this court would not support the expense so much as the business of the law courts, but what I have recommended would embrace all, and would be infinitely a more effectual system.

63. *Chairman*.] There is also great expense arising in these courts from sending wills to the country at assizes, and attendances there?—Yes, it was a suggestion in some of our former Reports on the Law Courts, that the practice and consequent expense should be changed; and that instead of bringing down original wills, attested copies, attested perhaps by the signature of the judge, should be given in evidence, in the same way as depositions of the Court of Chancery, or pleadings in the equity courts. Original wills being of such consequence, it appeared to me better to have attested copies to be sent down on occasions, rather than commit the original wills themselves to the chance, however careful the officer, of being lost or destroyed by robbery or otherwise.

64. Mr. *West*.] You were a practitioner yourself a long time; do you think that it would be possible or useful to do this in all cases, such as in a case of ejectment, where fraud was charged, or in the case of the execution of a will, executed, for instance, by an infirm person; how would you meet that difficulty?—By making an exception under the permission of the judge, that where, on special application, the nature of the trial required the inspection of the document itself, there the document should, under special direction, be submitted to examination, as in other cases, on application of the court *in banco*.

65. *Chairman*.] Did it ever occur to you that there was great objection to the course pursued in this court of taking depositions in writing?—Yes; I have seen so much of depositions *vide voce* being more effectual for the investigation of truth than taking them in writing, that certainly it struck me as very singular. I remember one case of very great impression, and very great curiosity, on the circuit on which I went; a case in which I am sure, from the written depositions, the verdict would have been diametrically opposite, by an intelligent and honest jury, what it was upon the *vide voce* evidence; a case in which a large estate was concerned, and in which eventually the succession to a marquise, on the death of one life, would have ensued.

66. That is only as to the effect; is there not another objection in your mind as to the expense connected with this mode of taking evidence?—The expense, I should suppose, is greatly enhanced by the voluminous briefs which the practice of written evidence must have occasioned.

67. Not only by the voluminous briefs, but is it not increased by the necessity of employing persons to take down the evidence at very great expense?—Yes, of course.

68. Mr. *West*.] If the evidence were to be taken *vide voce*, I presume you contemplate that it might be taken before the judge of the court in the ordinary way?—Unquestionably.

69. From your knowledge of the court, of the quantity of business, would one judge, as at present constituted, be sufficient to do the business of the court, trying causes in that way, and hearing *vide voce* evidence?—I am not sufficiently aware of the practice, or extent of the practice, to give a positive answer; but I conceive one judge might not be sufficient if there was much business before the court, and that in that case some expedients should be devised.

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70. That

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70. That would involve a change of constitution of the entire court, supposing one judge were not sufficient to take *visd voce* evidence?—I think it is rather too strong a term; I will suppose, for example, an under judge, something of a deputy, for that especial purpose; the principle of administration of justice would remain the same, the constitution would certainly be changed by the adoption of the mode of taking *visd voce* instead of written evidence; but I contemplated *visd voce* evidence not being used in all cases where documentary evidence was brought forward. A great number of cases in the Ecclesiastical Courts would not involve any necessity for any *visd voce* examination; I am not aware of any cases before the Ecclesiastical Courts involving the necessity of a *visd voce* examination, except where the execution of testamentary papers came in question, or in matrimonial cases.

71. Assuming for a moment that the business of the court was more than sufficient to occupy the time of the judge, as at present constituted, what remedy could you suggest for that?—I have not considered it in a way that would justify me in obtruding an opinion; at the same time, if I were forced to give an opinion, I would do it as well as I could.

72. You have suggested a deputy; would it be possible to hear the case upon *visd voce* testimony by deputy, and have the discussion before the principal judge?—It would be almost the same thing as original written evidence.

73. *Mr. Villiers Stuart.*] Has the judge, in the present instance, to read the evidence always?—Unquestionably.

74. Would it not take longer to read the evidence than to hear it?—Yes.

75. *Mr. West.*] Does it not occur to you, that in case of a deputy taking the *visd voce* evidence, the principal judge would have to decide, not upon the evidence, either oral or written, but upon the impressions of the deputy?—My answer is, that probably the change in the practice of the court would require a supplemental judge.

76. *Mr. Villiers Stuart.*] As the judge must study the written evidence before he can decide upon the case, does it not occupy nearly as much, if not quite as much time, as if he received *visd voce* evidence?—I should think more. *Mr. West*, who is at present in great practice, might be able to give a decisive opinion upon that subject. The judge will have more trouble in reading and considering the written evidence than in being present at the *visd voce* examination.

77. *Chairman.*] Your objection to this course of written depositions is, that it tends to prolixity of pleading, and gives more facility for litigation?—It tends to prolixity of pleading; but the system of the court, as detailed in the evidence which I have read, and which you have before you, exhibits great prolixity of pleading, which must have the same effect in tediousness of practice, in causing voluminous briefs, and consequent expenses that written evidence also has.

Joseph Hamilton, Esq., called in; and Examined.

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78. *Chairman.*] DO you wish any question to be put to *Mr. Webb Webber*, the witness last examined by this Committee?—I am not at present prepared to say; I come here quite ignorant of the course of examination which has been pursued; but the Committee have been kind enough to inform me, that if any thing comes out on his examination that has reference to the proctors, I shall have an opportunity of answering it.

Mercurii, 3^a die Maii, 1837.

MEMBERS PRESENT.

Mr. Villiers Stuart.
Mr. Hamilton.
Mr. West.

Mr. Lucas.
Mr. Serjeant Ball.

MR. WINSTON BARRON IN THE CHAIR.

Joseph Hamilton, Esq., called in; and further Examined.

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79. *Chairman.*] YOU have come prepared to substantiate the allegations contained in your memorial?—The proctors conceive that the evidence already given by *Mr. Hawkins* and *Mr. Stock* and other gentlemen is sufficient to substantiate their case; we do not say that we can give any further evidence, at least

as at present advised on the subject, but we complain of the colouring that has been given to the whole transaction, and we also claim to be entitled to the same fees as the gentlemen of the same profession in this country; and I am also prepared to show that the formation of the Irish scale is substantially the same as the formation of the scale alluded to in this printed document, which has not been interfered with, either by the Commissioners of Judicial Inquiry or Ecclesiastical Inquiry in England, nor even by the Legislature.

80. You complain here in your memorial of the recommendation contained in the 19th Report; I wish to know from you (for that is rather a vague manner of putting it before us), what part of the 19th Report is it that you particularly allude to?—Principally the proposed scale of fees upon extraction of probates and administrations; I have it not with me; they recommend that the existing scale shall be discontinued, and that the scale proposed shall be the one used in future (vide page 30, entitled "Scale of Fees to be allowed to the Proctors in extracting").

81. What portion of this am I to understand that you object to?—To the whole of it.

82. At present, does it differ materially from the fees which you receive now?—It does, very materially.

83. And none of these recommendations contained in this Report, I am to understand, have been carried into effect on that point?—None on that point, as regards the proctors.

84. You state in your memorial that that is the principal source of the emoluments of the proctors?—It is so stated in the evidence and in the memorial, and is in point of fact so.

85. Am I to understand you then to say distinctly, that the proctors were heard by these Commissioners?—Certainly not; they were examined; the registrar and several of the proctors were examined, but they had no opportunity of knowing any thing at all relating to the Report until it was concluded.

86. Am I to understand that the proctors were examined and the registrar of the court by the Commissioners who made this Report previous to the Report being signed?—Certainly; several of them.

87. Am I to understand from that, that the proctors were examined on these very points, and on these very fees?—They were examined as to the scale of 1812, as compared with the former mode of charges.

88. The greatest grievance you complain of is the point we have been examining upon?—It is the greatest grievance.

89. And you say that that point has been examined into already by the Commissioners, at least, the point of fees has been examined into by the Commissioners?—It has.

90. And you state that you have no new light to throw upon the matter?—No; except as stated in my answer to question 79.

91. Mr. *Villiers Stuart*.] Would the fees be lessened if the recommendations were adopted which were made by the Commissioners?—Most materially.

92. Mr. *West*.] Do you rest your case on the evidence given by the proctors on their former examination, or is there any thing new you have to offer us?—This report has lain over for a very considerable time, and we were not at all apprized of the intention to bring it forward at this particular moment, and there has been a meeting of the profession in Ireland just as I left; I was merely despatched here to see what the course of proceeding was, and I have not yet had any communication from them; the objections which we make to the Report will be found contained very fully in the memorial.

93. *Chairman*.] It is said, your memorialists are able to demonstrate that the Irish scale of 1812 was most expressly approved by Dr. Duigenan; is that fact stated or proved in the former examination?—It is sworn to distinctly by Mr. Hawkins in two places.

94. It is also stated, "that this scale of fees, as it now obtains in both countries (with some slight modifications in adapting it to the official fees in Ireland) was first introduced at Doctors' Commons in the time of Sir William Wynne, by the sanction and allowance of that eminent judge:" is that stated in the former examination?—Not at all; that was not known to the proctors at the time.

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95. *Mr. Hamilton.*] You state that the table of fees had the sanction or allowance of the learned judge; can you point out in the Report the precise passage to which you allude?—There are several passages to that effect contained in different parts of the evidence.

96. *Mr. West.*] You have been a proctor yourself?—I have.

97. You are still practising?—I am still practising.

98. Can you tell me, from the state of the business of the court, whether a proctor is fully occupied during the whole year?—A practitioner in full business in the court is.

99. Has he enough to occupy him the whole year as fully as the solicitors in the other courts?—It depends of course on the amount of his practice.

100. Does the court furnish sufficient business to those who have the most business in it for the entire year?—With the exception of the usual vacations, which are the same as those of the other branches of the law, there are of course several of the juniors who have very little business; there are two or three offices that have a very considerable amount of business.

101. How many proctors are there in court?—I think there are 20 at present.

102. Is the number limited?—No; in compliance with the 19th Report, Dr. Radcliffe made an order doing away the monopoly of receiving apprentices which had been enjoyed by the registrar, and he has now made rules that every proctor of 10 years' standing may take an apprentice; I have a copy of those rules with me; I have written to Ireland for an attested copy of them, as I did not compare this copy myself; and I could not sufficiently vouch for its correctness, I have written to Mr. Hawkins either to bring over the original book, or to bring an attested copy with him.

103. *Chairman.*] Then it was formerly the registrar only who took apprentices, and now any proctor of 10 years' standing has the same privilege?—He has the same privilege.

104. *Mr. West.*] And may take as many as he wishes?—No, he is limited to one at a time.

105. *Chairman.*] What is the present fee paid?—I think the present fee varies from 600*l.* to 700*l.* or 800*l.*

106. How long is it since you were bound yourself as an apprentice in the court?—I was bound apprentice in the year 1804 or 1805.

107. What was the fee when you were bound?—I paid 500*l.*

108. Previous to your being bound the fee was considerably less?—It was 300*l.* only.

109. It was then raised to 500*l.*?—Yes, I was the first who paid a fee of 500*l.*

110. And during your time it was raised further?—It was raised further.

111. To what sum?—I believe the highest was 1,000*l.* or 1,000 guineas.

112. And is it now something diminished?—It is now diminished; the house that I belong to have not yet taken an apprentice.

113. Do you not believe that this very high fee of 700 or 800 guineas tends to give a species of monopoly in the court that it excludes a great number and limits the practice?—I should say it has that effect; but at the same time I should say that the business, taking it in the aggregate, is so limited that if there were greater facilities for a greater number of apprentices allowed to each member of the profession, the profession would be so overstocked it would be altogether not worth following.

114. Are you not aware that the same objection would apply to the profession of an attorney, of a barrister, a surgeon, or in fact any other profession?—As to the profession of an attorney, they have several modes of profit which the proctor has not; the attorney and solicitor have four courts to practise in; the Irish proctor has but one, he does not even practise in the Court of Admiralty as they do in this country.

115. Would it not apply to other professions and trades, such as that of a bookseller or merchant?—As a general principle, I should say it would.

116. *Mr. West.*] What is the term of apprenticeship?—The term of apprenticeship now is seven years, unless the apprentice clerk takes a degree of bachelor of arts; having obtained a degree of bachelor of arts, he is entitled to be admitted in five years.

117. When you speak of 1,000*l.* as a fee, is that in-door or out-door apprenticeship?—Out-door; I believe none of the gentlemen have in-door apprentices.

118. All

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118. All the cases you have mentioned are out-door apprentices?—All are out-door apprentices.

119. Is there no distinction in the fee, whether taken with a bachelor of arts or not?—No, I have not found it in the least; there is no difference; I cannot speak of my own knowledge, I only speak from what I hear in the profession, our house not having taken apprentices.

120. Mr. Hamilton.] Is the amount of the fee determined by any fixed rule, or does it depend upon the value, or supposed value, of the education?—A great deal depends upon the office in which the apprentice is put.

121. Mr. West.] Is it not altogether at the discretion of the proctor who takes the apprentice?—I should say it was.

122. Much the same as in the case of an attorney?—Yes, I believe attorneys have a limited fee; I am not quite sure.

123. Is not a great part of the business of your profession strictly analogous to the business of an attorney in other courts?—More to the profession of a solicitor, conducting of suits, and so on.

124. Speaking of briefing, is there any disproportion between the rate of your fees as proctor, and those of a solicitor in the sort of business that is strictly analogous to your own?—I think not with respect to briefing; the fee upon briefing is 3 s. 4 d. per sheet for the draft, and 2 s. for the fair copy, and I have heard that the solicitors are allowed the same; every sheet of brief must contain five office sheets of 90 words each.

125. You take equal quantities of both, and you consider that the rate of charge is the same in both?—The rate of allowance for the number of words in each sheet differs, but I am not prepared to state in what respect.

126. Is there any other part of the business of a solicitor analogous to your own, in which there is any difference in the allowance?—I am not particularly well acquainted with the allowances made to solicitors.

127. What other part of your business is similar to that of a solicitor; are you allowed a retaining fee?—We are, 6 s. 8 d.; we are allowed for attendances 6 s. 8 d., that is the same as a solicitor; we are allowed for drafts of pleadings 1 s. 4 d. the draft, and 7 d. for the fair copy.

128. Can you state what the allowances are?—I cannot.

129. Is your attendance a daily attendance?—I speak of general attendances upon any matter connected with the case.

130. You do not charge more than one attendance for one day?—Not more; it is rare, unless it is matter of importance connected with the suit, that attendance is charged.

131. Is there any instance where you charge for more than one attendance in one day?—No.

132. Can you state any other business that you are allowed for in the same way as solicitors in courts of equity?—We are allowed also fees upon the different processes.

133. Do you know whether the Commissioners who framed this 19th Report have, in this particular instance that I have mentioned, reduced the old scale, and made any alterations in the proposed scale?—I think, as far as I recollect they recommended that the same charges shall be given to proctors as to solicitors.

134. It would follow from that, that if there are similar charges for similar work, there is no alteration?—I believe you will find the allowance made to solicitors in the evidence of Mr. Dunn.

135. Mr. Villiers Stuart.] Can you state what recommendations that are made in the Report of the Commissioners have been adopted?—They are stated in this memorial: "he has thrown open the profession, by permitting the proctors to take apprentices, instead of its being confined to the deputy registrar as formerly; he has limited the practice of pleading to two pleadings instead of three, as before; he has appointed a regular routine for the examiners in causes; and he has prohibited altogether the practice of charging solicitation fees."

136. Are the Committee to understand, that these are the only recommendations that have been adopted?—As far as I recollect.

137. The registrar is still allowed to take apprentices?—He is not.

138. Mr. Hamilton.] Has the diminution in the amount of fees been consequent on the permission to proctors to take apprentices?—Certainly; I should suppose it has.

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139. *Chairman.*] Has there not been a new regulation made about taxation of costs?—I think there has; there was an Act of Parliament that was overlooked, which I do not exactly recollect the date of, but it is now necessary, when a bill of costs is required to be taxed, to exhibit a petition on behalf of the party requiring the costs to be taxed; the judge then refers the bill to the registrar for taxation, and he subsequently confirms the bill after the taxation has taken place.

140. That was not the former practice?—That was the practice between party and party; the bill of costs was exhibited in court, and then referred to the registrar.

141. The deputy registrar was also a practising proctor in the court?—Never in causes.

142. But in reality he was?—I believe, from what I know myself, that if any matter in which he had been originally employed to extract probate, if the will or right to administration was contested, I have always understood he handed it over to another proctor.

143. It was merely a professional understanding, that it was his business, conducted in another person's name?—I am not aware of it, but I can answer for myself, that I have, on more than one occasion, had business handed over to me by him, and that I never participated with him, directly or indirectly, in any part of the emolument, nor even did he afterwards extract the probate.

144. Under the former regulations of the court, the deputy registrar was a proctor?—No, he served his apprenticeship, and was admitted, but never practised as proctor in the conduct of suits in the Court of Prerogative.

145. Am I to understand, that he had not professional emoluments besides, arising from his being deputy registrar, from his connexion with the courts?—Not to my knowledge, except that he extracts probates and administrations; what is called common form business. If a will was lodged with the registrar by a client of his own, and caveat was entered against probate, and it became necessary to take proceedings to remove the caveat, as far as my knowledge goes, he did not interfere, for I have known him put it to his client whether there was any other member of the profession whom he would wish to employ.

146. What part of the proper business of a proctor did the deputy registrar perform?—Nothing more than the common form, extraction of probates and administrations.

147. *Mr. Hamilton.*] Do you mean that the deputy registrar performs that which is called the voluntary jurisdiction, but not the other?—But not the other.

148. What is meant by voluntary jurisdiction?—The expediting probates of wills and letters of administration; and I should also add, the extracting marriage licenses.

149. Those are only what are properly called ministerial acts?—Yes.

150. May it be defined in this way, official business not connected with suits?—It may.

151. Am I to understand you, that in the taxation of costs that go before the deputy registrar, he has an interest in the amount of those costs?—He taxes the fees due to the registrar, of course, for they are all included in the bill.

152. Has the deputy registrar any interest himself in the amount of fees which he himself taxes?—He receives a proportion from the registrar as a remuneration for his services as deputy, as I have heard.

153. How is the deputy registrar paid?—I have always understood that he is paid by a proportion of the fees payable to the registrar.

154. How is that proportion ascertained?—I should suppose it is by a private agreement between himself and the registrar.

155. *Mr. Villiers Stuart.*] And the greater the amount of fees the higher the salary of the deputy registrar?—That might be inferred.

156. *Chairman.*] Do you think it would be beneficial to the suitors, generally speaking, to have a distinct tribunal appointed for the taxation of costs wherein the parties would be totally unconnected with the court in any other respect?—I have always conceived that the registrar would be the most competent person to tax, provided he had a salary in lieu of fees; that he is the person best acquainted with what is actually necessary to be done in the progress of a suit, both from his professional and official knowledge.

157. Do you think that another plan, which has suggested itself to me and others,

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others, would be advisable, that of having one, two or three officers appointed as a species of court connected with the different courts in Ireland, to be called a taxing court, or by any other name that might be thought proper, not limiting it to two or three, but as many as might be thought necessary, having persons of experience from each court members of the tribunal?—The question has never occurred to me in that point of view; but there are at present two taxing officers in the law courts, and the masters in Chancery are the taxing officers of the Court of Chancery; and if the registrar, as recommended by the Report, was put upon a salary, I should see no objection to him as taxing officer.

158. Are you not aware that the taxation of the masters in Chancery has been found fault with in many respects?—Perhaps taxations are generally found fault with by practitioners, as being too severe.

159. Has it not been considered in many respects an objectionable tribunal, and one where they have business of a higher character and different description to perform, and that it is wrong mixing up taxing and official duties together?—I have never heard any such objection.

160. Mr. *Villiers Stuart*.] Can you state to the Committee why the recommendation of the Commissioners, that the registrar should have a salary, and no other business, has not been adopted?—That could only be done, I conceive, by the intervention of Parliament; it was not in the power of the judge to do so.

161. Are there any other recommendations of the Commissioners that the judge had power to carry into effect, and which he has not carried into effect?—I am quite sure that Dr. Radcliffe has carried every recommendation into effect as far as he conceived he had the power to do so.

162. Is the witness aware of any suggestion recommended by the Commissioners which Dr. Radcliffe had the power of carrying into effect, and which he has not carried into effect?—I am not aware of any.

163. *Chairman*.] Are you aware that the public have complained of the great expense of litigation in these courts?—I have heard that there are complaints of that nature.

164. Have you directed your attention to that which is stated by the Commissioners as to the case of *Macnamara v. Macnamara*?—I recollect that case.

165. It is there stated that the whole sum in litigation was under 3,500*l.*; that the costs incurred by the promovent, who succeeded, between Easter term 1821 and Trinity 1823, amounted to 5,770*l.* 11*s.* 6*d.*, of which between 1,600*l.* and 1,700*l.* was for the proctor's attendance only on commissions, and 391*l.* for preparing drafts; were you concerned in that case?—Not as proctor; but I was employed part of the time as an examiner in the court; as supernumerary examiner.

166. In the country, was it?—In the country.

167. What was the amount of fees charged per day for your attendance in the country?—The regular fees that have been heretofore allowed; four guineas per day, including all expenses.

168. For each examiner?—For each examiner.

169. And there are generally two?—No; there is but one usually employed. I should say that that was an extreme case, and that the proceedings in that case were carried on in a very extraordinary manner by the gentlemen concerned for the impugnant, from the very peculiar circumstances under which that gentleman then laboured.

170. You said that the only fee was four guineas per day?—That is the allowance to examiners.

171. In that particular instance?—In all cases.

172. Mr. *West*.] Is it the regular fee to the ordinary examiner?—Yes.

173. Is that what Dr. Mason gets?—That is what Dr. Mason gets, including travelling expenses and living.

174. Mr. *Lucas*.] Are you certain, that if an examiner were sent 100 miles, that would include travelling expenses?—Yes.

175. Mr. *Villiers Stuart*.] Does he not receive four guineas for each 40 Irish miles?—He does. I should say, that in practice the registrar does not allow them to calculate strictly the 40 Irish miles; the allowance, if they went to a place distant 100 miles, would be at the rate of two days.

176. And then four guineas a day during his absence?—The allowance is four guineas per day for travelling, at the rate of 40 Irish miles per day. This

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will probably illustrate it: the examiner, in going to Cork, would be allowed three days, at four guineas per day.

177. You can travel from Dublin to Cork in one day, at least in 24 hours?—Yes, by mail.

178. *Chairman.*] Would it not constantly occur that a gentleman is paid double for the same day under these circumstances; for instance, he travels to Cork in one day; he is examining there, and gets three days' payment for that; he goes back to Dublin on the fourth day; for these five days' joint business, according to what you have stated, this gentleman will not get 20 guineas, but he can charge 36?—He will be allowed three days, at four guineas a day, for going to Cork, and will be allowed the like sum for returning. He will be allowed four guineas for every day the business takes up; and the same number of days for returning.

179. That would make 36 guineas for the six days, supposing the business occupied three days in Cork?—Yes; but I should observe, that the principle on which the practitioner receives that sum is as a remuneration for his being taken away from his official duties in town.

180. The examiner is not necessarily a practitioner?—No, he is restricted from practice.

181. The examiner is not considered a professional man, he is a mere officer employed for the purpose?—He is employed for the purpose.

182. *Mr. Villiers Stuart.*] Is the proctor's allowance confined to the days of actual attendance, or would he, although he actually returned to Dublin, charge for every day whilst the commission was open?—The proctor might charge it, but the registrar would strike it off; the registrar would only allow for every day he was in actual attendance.

183. *Chairman.*] Always excepting the allowance for travelling?—Always excepting the allowance for travelling.

184. *Mr. West.*] Suppose Dr. Mason went to Cork to examine, and proposed to examine a witness, and, owing to the default of either of those parties, the witness was not in attendance and no business could be done on that particular day, would the taxing officer, that is, the deputy registrar, allow him for that or not?—He would, because it was not the fault of the examiner, but the fault of the party or proctor.

185. *Chairman.*] How many hours is it the custom of the examiners to bestow in doing their duty in these cases?—Five hours a day, from eleven till four; but the examiner never refuses an extra hour, if necessary for the convenience of the party or the witness, without any additional charge.

186. *Mr. Villiers Stuart.*] You think that is a fair allowance of time to the public?—I think that probably from ten to four, an additional hour, would be an additional advantage.

187. *Chairman.*] Have you directed your attention to the case of Gilmer v. Barrington, where the amount of costs, it is stated, incurred between Michaelmas term 1821 and Easter term 1824, including probate, was 1,422*l.* 17*s.* 6*d.*, 125*l.* 1*s.* 7*d.* having been taken off under taxation, and assets sworn under 7,500*l.*?—I was not the proctor concerned in that cause; Mr. Stock was the proctor in that case.

188. *Mr. Lascel.*] How are these examiners remunerated; are they remunerated solely by these fees upon expeditions from Dublin, or are they remunerated habitually by any other method of livelihood?—No, they are prohibited by the rule of the court from practising at the bar, either at the common law courts or Ecclesiastical Courts; they are doctors of law, they are advocates; Dr. Moore has not any other occupation; Dr. Mason has another occupation, as librarian to the King's Inns.

189. Will you be kind enough to state what other occupation they can, and do any of them carry on, independent of the duty of examiner?—I am not aware that Dr. Moore carries on any other occupation; Dr. Mason is librarian to the King's Inns, but what salary he derives from that, I am not at all aware.

190. The question has reference to the class, not to individual gentlemen?—There are but two, those two I have mentioned; one of them may have some private property; I rather think he has no other occupation.

191. What other occupation can they have that would give them a livelihood?—I should think not any.

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192. Mr. Serjeant Ball.] You mentioned that Dr. Mason is librarian to the King's Inns; is it not his duty to be in attendance there during a great part of the year?—I cannot tell what his duties are.

193. Do you suppose that he has no duty, or is the librarian only a nominal office?—Of course he has certain duties to perform.

194. Have you any doubt that Dr. Mason, as librarian of the King's Inns, must be obliged to give his attendance at the library at certain times?—He must at certain portions of time, I presume.

195. You have no idea of what portions?—No, I have not; this I should say with respect to Dr. Mason, I have had frequent intercourse with him in the course of my professional practice, and he is at all times ready to examine witnesses when called upon. It has not happened that they have a witness to examine every day.

196. As far as your experience goes, you do not find that his duties of librarian are incompatible with his doing his duties as examiner?—I should say not.

197. Mr. West.] Have these examiners any other payment than for the days they are actually engaged upon these commissions or on examinations?—None.

198. They have no salary?—No salary.

199. No other emoluments?—They usually receive fees.

200. Are the fees received for the time they are actually engaged as examiners?—For the time they are actually engaged as examiners.

201. There may be many days in the year on which they receive nothing?—Perhaps a very considerable portion of the year they are unemployed.

202. Can you give us an idea about what portion of the year they are actually engaged?—During term time.

203. Are they generally engaged during the whole of each term?—Not during the whole of the term; there are many days when they have nothing to do.

204. Mr. Serjeant Ball.] Do you take the business of the court to be stationary, retrograde or advancing?—I should say that the business has retrograded.

205. Can you account for that?—I cannot.

206. Chairman.] You do not think the expenses of the court have any thing to do with the diminution of the business?—Perhaps they may.

207. Are you aware that the expenses of the law courts and equity courts have been considerably diminished of late years?—I understand they have been, by Acts of Parliament and by regulations of the judges.

208. Have the expenses of the Ecclesiastical Courts in Ireland diminished in a corresponding degree?—The expense of a suit now, I conceive, since Dr. Radcliffe made an order limiting the number of pleadings, has been very considerably decreased.

209. So that the expenses of a suit, you conceive, are considerably diminished?—I conceive they are; he has limited the number of pleadings to two instead of three, as formerly; formerly the party might have a commission upon each of the pleadings, which of course increased the expense.

210. Mr. Serjeant Ball.] These rules were made after the Commissioners' Report?—They were.

211. He had it in contemplation to make these rules before the Commissioners made their report?—I was not aware of that.

212. Do you practise in the Consistorial Court also?—Yes.

213. Did these rules extend to the Consistorial Court, or were they confined to the Prerogative Court?—They extended to the Consistorial Court.

214. I believe you are sufficiently aware of the constitution of this court to know that the judge could not, of his own authority, make any change in the fees that were established before he became judge?—I conceive it is so.

215. And accordingly the rules made by Dr. Radcliffe did not make any alteration in the old established fees?—Not with respect to the fees of officers that might be considered as vested rights.

216. So that these rules, as far as they made any alteration in fees; or diminished the amount of fees, were confined to fees which had been established since he came into office, at least, they did not embrace any fees that had been in existence at the time he came in?—No.

217. He having no authority to make any such alterations?—No.

218. Have you any reason to suppose that if Dr. Radcliffe had had authority to alter or diminish the amount of fees established before his time, he would have done so?—I am quite sure he would.

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219. Have you reason to know that it was Dr. Radcliffe's intention, if he had had the power to do so, to have brought the fees in the Ecclesiastical Courts to the level of the fees of Doctors' Commons?—I think I have heard him express himself to that effect.

220. Have you read the 19th Report?—I have.

221. Are you aware that by that Report the Commissioners recommended that the engrossment of depositions should be taken from the registrars and given to the examiner?—Copies of depositions.

222. Is it the duty or office of the registrar to ingross depositions?—It is the duty of the examiner to ingross the depositions; he takes them down in writing.

223. *Chairmen.*] In the actual arrangement between registrar and deputy registrar, does he claim a portion of these fees as his own private emolument?—I have always understood the case to be, that there was a private agreement between him and the principal; that he received so much a year for performing the duties out of the aggregate amount of fees.

224. Are you aware that the deputy registrar claims fees peculiar to himself, in the shape of a gratuity of 2s. upon each probate of administration, which the proctors agreed to give out of their own pockets to Mr. Upton, the predecessor of Mr. Hawkins, in consideration of his advancing the stamp duties on their instruments, and having them ready in his office?—I am not quite sure whether he now receives it or not; when the Report was printed he did.

225. You are not aware of any change?—I am rather inclined to think that he does not receive it now.

226. But the fee is paid?—I rather think not; I know that the other fee, that of 4s., he does not receive.

227. Do you know whether the particular fees claimed, as it is said in the Report, by the under registrar, or deputy registrar, was claimed by the deputy registrar from the suitors in addition to the customary fees paid by the suitors to the registrar himself?—I rather think it was received from the proctors; it was an understanding between the deputy registrar and the proctors.

228. But not an additional fee chargeable to the suitor?—I declare I cannot say whether the proctor charged it to the suitor or not; for several years past, in the firm that I have belonged to, I have not attended to that department of business.

229. *Mr. Serjeant Ball.*] Are you aware the registrar had been always entitled to a fee for the ingrossment of depositions?—Not for the ingrossment, but for the attested copy of depositions; the examiner takes the examination in writing; when the technical rule for publication passes in the cause, then the depositions are handed in by the examiner to the registrar; if the party then demands a copy of the depositions, it is furnished by the registrar, and not by the examiner.

230. Then I presume that what the Commissioners recommended was, that a copy of the depositions should be taken from the examiner and not from the registrar?—That is the case in England; I think they have done so, but I have not read that part of the Report lately.

231. Is it in your knowledge that the judge has not the power to adopt that regulation?—I apprehend he has not; it would be taking from the registrar a customary fee that he has a vested right in.

232. What would you say to the adoption of the regulation; would you approve of that?—It would make very little difference to the proctor whether he gets the copy from the examiner or the registrar.

233. But as a mode of remunerating the examiners, would you consider that an advantageous mode of remuneration, in addition to the fees they have at present?—I conceive they are sufficiently remunerated by the fees they receive at present, if those fees are continued; if the fees recommended by the Commissioners are adopted, I think their remuneration would not be sufficient.

234. If they were adopted, would you consider it right that this fee should be taken from the registrar, and given to the examiner?—Certainly.

235. *Mr. Villiers Stuart.*] You stated just now that there are but two examiners, and that they take the business alternately, do you think that is a convenient practice?—It is stated in the Report, that they do not take it alternately; before the Report was made, it was at the option of the proctor to employ which examiner he pleased; one of the rules made by Dr. Radcliffe, is a regular routine in causes, they take each case alternately.

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236. Mr. Serjeant Ball.] Is it the duty of the examiner to leave Dublin when called upon to go into the country, or to go abroad?—It is his duty; I believe that Dr. Mason has declined to attend upon the commission.

237. Does he never leave Dublin?—He does.

238. How is it he has declined?—Perhaps in consequence of ill health.

239. Are you aware that he has ever declined in consequence of his other duties as a librarian interfering?—I have known him to decline, but I do not recollect his having assigned any reason.

240. Do you conceive that, consistently with his duty as librarian, he can leave Dublin, or go into the country to examine, or go abroad?—I should say not.

241. Do you know whether he holds any other office besides the two you have mentioned?—I am not aware that he does.

242. Mr. Lucas.] Have you ever known an instance where an examiner has declined going into the country to examine in consequence of other duties?—No.

243. Have you ever known any inconvenience sustained by the public in consequence of an examiner declining to go?—No.

244. But you have known of the examiner, Dr. Mason, declining to go?—I have.

245. More than once?—I have heard it more than once.

246. Frequently?—I cannot say frequently; I have heard it more than once.

247. You did not hear that he assigned it as a reason for his declining to go, that he had other duties to perform?—The particular duties, I did not hear assigned.

248. But he said he had other duties to perform?—I have heard so.

249. Chairman.] I wish to direct your attention to the clerks' fees connected with this court, the Prerogative Court; did it ever come to your knowledge that the fees of the clerks were raised at any particular time?—I cannot speak with any certainty as to the clerks' fees; I never myself investigated the matter particularly; I always paid whatever clerks' fee was demanded, conceiving it to be the accustomed fee due.

250. There is a very important part of the Report of the Committee in page 16, which states, "that clerks' fees have been repeatedly condemned by this board, as having a necessary tendency to exaction, and in the present case we conceive the mischief has been strongly illustrated by the conduct of the deputy registrar, who has, of his own authority, from time to time, raised the fees of the clerks, and diminished their salaries, thus augmenting his own emoluments at the expense of the public?"—I understand that Mr. Hawkins would be able satisfactorily to rebut that part of the Report.

251. Mr. Lucas.] Can you give any information on the subject of diminishing the salaries and raising the fees of the clerks?—No, I cannot.

252. Mr. Serjeant Ball.] Can you state what may be the average income of the examiners arising from their fees?—I cannot.

253. Can you form any conjecture one way or the other?—It would be quite impossible for me to form any conjecture.

254. Could you say within 500 *l.* a year of it; is it 1,000 *l.*?—No, I should say not; perhaps not 500 *l.*

255. Do you think it is under 500 *l.*?—From 500 *l.* to 600 *l.* I should say.

256. What would you say was the income of the principal registrar?—I should say 2,500 *l.* or 3,000 *l.* a year; I cannot speak of my own knowledge.

257. What would you say as to the deputy registrar?—I do not know; that is an arrangement between him and his principal.

258. Do you know what is Dr. Mason's income as librarian of the King's Inns?—I have heard it is 300 *l.* a year; I believe he has apartments.

259. Of course you cannot have a doubt that the benchers would not pay Dr. Mason 300 *l.* a year if he had not some adequate duties to perform?—I should think not.

260. Chairman.] The judge, it would appear, laid down a scale of fees for proctors to charge in the court, and this Report states distinctly that there was an order of the court by which the fees were to be regulated, but that upon examination the scale is not in conformity with the rule?—The objection made by the Report is, that it contains an item which is not in the scale, which was obtained by Mr. Stock, the proctor, from Doctors' Commons; another objection is, that it is in Irish currency.

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261. The judge laid down the scale in Irish currency, and you charge it in British currency?—No, the charges are made in Irish currency reduced to British currency, that is one part of the Report that we complain of; we contend that the registrar in framing the Report made it applicable to the Irish currency, and to the official fees payable in Ireland, taking the English scale as received from Doctors' Commons as a model; but it turns out, in point of fact, that the scale which was received from the Proctors' Office at Doctors' Commons was not the scale that was actually used, it was only given as a model, and I should say that Mr. Hawkins took it merely as a model for the Irish scale, and the Commissioners altogether suppress the fact of the circumstances under which the scale was adopted. In the year 1807 there was a very considerable increase of stamp duties; in Ireland previous to that year the highest stamp duty on probates and administrations was 10*l*.; the duties varied from 10*s*. to 10*l*.; they then adopted a scale very highly increased indeed, and it was in conformity with the practice in England that the proctors conceived they were entitled, as a consideration for being obliged to have a larger capital, and to advance money on stamps, to have a larger remuneration, but the Irish scale is still considerably less than the English scale; that is the poundage fee on the stamp duty which is the mode of remuneration referred to by the Commissioners is less; the stamp duties in England are considerably higher than the stamp duties in Ireland, and therefore the Irish public do not pay so much for the same description of business as the English.

262. Mr. Lucas.] That is to say, when the scale of stamp duties was raised in Ireland, in 1807, the proctors, who necessarily advanced the amount of stamps, thought themselves justly entitled to a larger remuneration than before the stamps were increased?—Yes, that is what I should wish to suggest.

263. Chairman.] There were other and more material deviations from the order, as the charges on commissions, and that for ingrossing, collating and entering the will contained in the printed scale, are not to be found in that from which it is said the charges are taken?—That was merely to have, at one view, the whole of the matters that were subject to charge. I was no party to the formation of the scale in 1812; I was only just admitted, and was not then attending to the profession; but I conceive that the alterations made, and here referred to, were made merely to bring the intended new scale as close to the English scale as the official fees and other circumstances connected with the Irish court would permit; and we conceive it rather unfair that the Commissioners should suppose, that by introducing the item "ingrossing, collating and entering," it should be represented that the scale is so formed as to make it appear that what is contained there is the gross amount of each charge, when it appears on the face of the scale there is a blank left for a charge which must be variable.

264. Mr. Lucas.] Did the proctors, in point of fact, depart from the judge's orders in regard to the scale of fees or not?—They adopted the scale adapted by the registrar to Irish fees and to Irish currency.

265. It was the registrar who changed the scale?—It was the registrar who arranged the scale.

266. And he differed in that arrangement from the form laid down by the judge in the order of the court?—I conceive that the judge intended that the scale, as adapted to the Irish courts, was the one contemplated by the order.

267. Mr. Villiers Stuart.] Did he make any other alteration in the scale than turning English into Irish money?—The fees payable in Doctors' Commons and the Prerogative Court in Dublin were different.

268. Mr. Lucas.] Was the scale of fees laid down by the registrar higher or lower than the English scale of fees for the same duty?—I am not sufficiently acquainted with the English scale of official fees to be able to compare them both.

269. Chairman.] The Commissioners state again, in addition to the change of currency and the charges on commissions, for "ingrossing, collating and entering the will," that "the printed scale" contains "in the charges sanctioned by it, some of the gratuities already mentioned as being paid to the deputy registrar, namely, 2*s*. on each probate and administration, and 1*s*. and 2*s*. 8*d*. on each commission;" whereas, in reality, they were not acknowledged as, properly speaking, fees of the court; but by the scale the registrar laid down he has deviated from the judge's order, by making these regular charges, and payable by the public?—That is a question I cannot take upon myself to answer, for I never inquired into the fee; I took the scale as I found it.

270. The

270. The fourth deviation is, that "clerks' fees" are also introduced into it, and appear to be imposed by its authority, although it is not alleged by Mr. Hawkins that the nature, the particulars, or the amount of the gratuities or clerks' fees were ever submitted to the consideration of the judge, or his attention directed to them; you are not cognizant of that point?—I am not.

271. The fifth point is, that the sum thereby presented as the entire charge, is deficient by the amount of fee for "ingrossing, collating and entering," which is not included in it?—It is not included for the reason I have mentioned; the charge must vary in every case, according to the length of the will.

272. Therefore it in a great measure deceives the public, because there is a scale laid down by the judge, by which all matters connected with these charges are given in full, apparently; whereas, when you come to the bill of costs in each case, you find it differs materially from the scale?—I should say not; for when the proctor is asked what the amount of fees is, he very frequently refers to this scale, with an intimation that it is exclusive of the ingrossment of the will.

273. The Commissioners state distinctly that it deceives the public?—That is their conclusion; we conceive it to be an unfair conclusion.

274. Mr. Lucas.] When the Commissioners seem to make a charge against the registrar with regard to drawing up the scale of fees, in what way do you think the imputation by the Commissioners is an unjust one?—They throw a slur upon the formation of the scale altogether; and they say that it is doubtful whether it was at all ever submitted to the judge, although Mr. Hawkins swears distinctly in his evidence that it was, and had his sanction.

275. How does it happen that the public may be deceived on looking at the scale of fees?—I do not conceive that any person having occasion to apply for a probate could be deceived by it; because if he referred to the scale, he would, as I have already pointed out, find that there is a blank left for the particular item, and he would naturally be led to inquire how that was to be filled up; and it is the practice in our office to tell a person that that is the charge of probate, exclusive of fees upon the ingrossment.

276. And the items omitted in drawing up a total of the fees are omitted, because they depend on the extent of proceedings in each particular case?—On the length of the will in each particular case.

277. Mr. Hamilton.] The charge is variable?—The charge is variable; in some cases the wills are very long, in others very short.

278. *Chairman.*] In page 26, it is said, "that the progressive principle in the amount of the duty is followed by a progressive principle of charge on your part also; that where the assets are under 50,000 *l.*, your fee would be 20*l.* 6*s.* 2*d.*, but where they were under 500,000 *l.* your fee would be 144*l.* 12*s.* 2*d.* for doing precisely the same act?—The services performed would certainly be the same; there might be some particular circumstances in each case that might make some alteration, but there would be no additional charge.

279. But supposing the two wills to be precisely of the same nature, precisely of the same size, precisely of the same number of words, and if under one will a man takes 50,000 *l.*, and under another will takes something under 500,000 *l.*, your charge in the first instance would be 20*l.* 6*s.* 2*d.*, and in the second case would be 144*l.* 12*s.* 2*d.* for precisely the same duty?—The latter is a case that has never occurred in Ireland; the personal property in Ireland is very limited in most cases, it seldom occurs that there is property administered exceeding 100,000 *l.*

280. That does not vary the principle in the two cases I have stated; you can charge 20*l.* 6*s.* 2*d.* in the first case, and 144*l.* 12*s.* 2*d.* in the latter case?—It would be the case.

281. Mr. Hamilton.] In the case of a larger sum, is there in the proctor any greater degree of responsibility than in a smaller sum?—There is a considerable degree of responsibility attendant on every case.

282. Does the money go through his hands?—In numerous cases the proctor advances the stamp.

283. Do you mean to say that the principal sum goes through his hands?—No, the probate duty.

284. Can you state any reason why the labour and duty, being the same in reference to a large and small sum of money, the charge with regard to a large sum of money should be greater than with regard to a small?—I think it is unfairly stated in the Report that the advance of money seldom takes place; I

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know that in the office to which I belong it does take place very frequently, and to a very considerable amount, and that was the principle upon which the poundage fee was established, both in Doctors' Commons and in Ireland.

285. *Chairman.*] Is it not true, that in general where an advance of this kind is made by the proctors, it is paid very soon indeed?—Sometimes it is not.

286. It is not like an attorney's bill of costs?—Generally speaking, perhaps it is not, but it very frequently occurs that these sums remain a long time unpaid; in the office to which I belong it is the daily habit to advance sums of perhaps 90*l.*, 100*l.* or 500*l.* stamp duty; of course these very large sums are not advanced without a certainty of repayment; it very frequently happens that there is money in the funds, and that the parties cannot come at the money to pay the probate duty without probate issues; frequently we are obliged to take bills, perhaps at three months and perhaps longer, and the principle I conceive on which the fee was established was a remuneration for this advance, and it is so stated in a letter from the registrar of the court at Doctors' Commons in a return to the House of Commons.

287. Can you state to the Committee on an average whether proctors are three months out of these large advances that they make for wills, proving wills, or getting probates in this court?—I cannot speak of my own knowledge of any office but the one I belong to; we have frequently perhaps to advance 60*l.*, 75*l.* and 90*l.*, and I should say upwards.

288. Is it not the habit, where large sums are obliged to be advanced for probate duty, to get those sums from the client or attorney in the cause?—It very frequently happens; it also frequently happens that the stamp duty only is paid, and the proctor may remain a long time indeed out of pocket the remainder of the costs.

289. Not for the actual sum advanced?—Not for the actual sum advanced, but for official fees.

290. The Commissioners dwell on this charge, and state that it is a great grievance?—I should say, that though the gross amount of charge for probate presents a considerable sum, yet when stamp duties and official fees are deducted from it, the proctor's charges would be found to be a very small part of the whole.

291. In page 28 of the Report, it says, "this fee is altogether for the proctor's benefit, and appears to us as more than commensurate to the service performed?"—I should say, with respect to that, that the service is very often attended with very considerable trouble; the proctor has to make calculations of stock and other property in the funds and other public securities, and he has also to make calculations as to the value of leasehold interests, and these are in some cases attended with considerable trouble.

292. Will you explain to the Committee what is the reason for the variation in page 29, between the scale laid down and the charge made?—I conceive that the scale contemplates only original grants of probates of administration, and not grants of administration *de bonis non* to which those observations refer.

293. Is there no scale then *de bonis non*?—The official fees are the same in administrations *de bonis non* as in original grants; the only difference I take to be is, that the will, in case of an administration *de bonis non*, is ingrossed in the office, and not by the proctor.

294. Is this a reason for deviating from the rule of court specifically laid down?—I have already stated that I conceive the original scale only contemplated original grants, not second grants.

295. Why?—I cannot account for that, except that the English scale applies to original grants only.

296. There is one scale published by the authority of the court, there is another scale, and a higher scale in fact, followed by the proctors of the court?—It appears to me that the only deviation is the extracting fee, 1*l.* 6*s.* 8*d.*; then the proctor has to attend in the office of the registrar; he is obliged to search for the original grant, and to ascertain who is entitled to the unadministered grant; he has to read the will over again, it may be that he had not been employed to extract the original grant, and he has then to prepare a fiat to go through all the proceedings as he would upon an original grant, with the addition of the attendance in the office.

297. Am I to understand from the witness that by a construction of the proctors the scale laid down was not applicable to this case, and that they made
a scale

a scale of their own not sanctioned by the judge?—I have already stated that my impression was that the scale only extended to original grants.

298. And that there is no rule for the scale, you mean, except that which the registrar has himself adopted?—The only difference is the alteration in the extraction fee, and I conceive I have accounted for that deviation.

299. I wish to direct the attention of the witness to the alteration without the sanction of the judge of the court?—It appears it is so.

300. Mr. *Hamilton*.] Does it appear that these duties are extra, and besides those which are contemplated in the scale?—These would not occur in the case of an original grant.

301. Has the extra fee of 1*l.* 6*s.* 8*d.* been at any time brought within the consideration of the judge?—I am not aware that it has; I have no doubt he has frequently taxed costs containing the charge.

302. *Chairman*.] What is your specific objection to the scale of fees to be allowed to the proctors on extracting; the Committee wish to understand on what principle and in what particulars you object to them?—They conceive that they do not afford sufficient remuneration for the altered state of circumstances induced by the great increase of the stamp duties.

303. In point of fact, the stamp duties are paid to the proctors in a short time after they had paid them out of their pocket, and they are very often paid beforehand?—It certainly is the case, there are some proctors who cannot afford to advance, others perhaps can.

304. In page 41, it is stated that the allowance to proctors for briefs forms a heavy item in a bill of costs; I wish to know whether this portion of the costs ought not, in justice to the public, under the new arrangement, to be diminished, whether the parties would not be sufficiently remunerated for duties performed without this charge for duties not performed?—It is in all cases the duty of the proctor to read over the depositions, and to make his observations upon them; but if you ask me whether, in point of fact, the draft of a brief is made, it certainly is not; but I conceive that the Commissioners make a mistake as to the charge of 2*d.* per office sheet, that is an allowance in the Court of Prerogative, as between party and party; the allowance between proctor and client is 3*s.* 4*d.* for the draft, and 2*s.* for the fair copy.

305. Mr. *Hamilton*.] How would that make a comparison with proceedings in the Court of Chancery?—I am not able to speak as to proceedings in the Court of Chancery; the allowance between party and party would be the same.

306. *Chairman*.] Do you not think it would tend to the benefit of the public if there were a table of fees in all cases conspicuously hung up in some public office, registry or otherwise, connected with this court?—Certainly.

307. Do you consider it would be beneficial that a rule should be established by the court that all other fees charged should be made the subject of complaint and penalty?—I should think that if there was a regular defined table of fees, no honest practitioner ought to go out of it.

308. And if there should be a table of fees separate for the registrar also, do you not consider it would be a very great advantage?—I think it would be desirable.

309. In all cases?—In all cases.

310. Do you not consider that the registrar would be paid more to the advantage of the public by a fixed salary than by a table of fees?—I have never turned my attention to the advantages or disadvantages of either system.

311. Do you consider that fees tend to increase or diminish the expense to the public, where public officers are paid by those fees?—I think that, unless there were some such control as you have just now mentioned, a regular scale of fees, it would have that tendency.

312. Supposing fees to be established by a regular scale, and that an officer of the court might, by some possibility, have an interest in increasing those fees, or, at least, in increasing the recurrence to payment, and thereby increasing his emoluments, do you consider that where he had no such inducement, and was paid by a fixed salary, the public would or would not be benefited by the fixed salary?—I should rather think they would; but then, on the other hand, if an officer had a fixed salary, it might have the effect of rendering him not so attentive to the duties of his office.

313. Supposing the officer to be removable at the pleasure of the court, would it not obviate that objection?—Certainly.

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314. Mr. Hamilton.] Have you ever heard whether the substitution of a fixed salary for fees has or has not been the practice as to the masters in Chancery;—has or has not had the effect of making them more attentive to their business?—I have heard great complaints of the system in Chancery, of the masters' offices, since the alteration; but that, perhaps, is inherent in the system. I am not conversant with them.

315. They are not removable at pleasure?—I believe they are not. From every thing I have heard, the masters are constant attendants in their office; but, from the nature of the case, they are only able to give a limited time to each cause; I believe one hour is the usual time. I speak with great diffidence about any thing connected with Chancery.

316. Chairmen.] You are aware that in the other law courts the fees to officers have, generally speaking, been taken away from those officers, and fixed salaries given to them?—I understand they have to the officers in the Court of Chancery.

317. Are you not aware that, generally speaking, this has had a beneficial effect for the public?—I cannot speak of my own knowledge.

Jovis, 4^o die Maii, 1837.

MEMBERS PRESENT.

Mr. Hamilton.
Mr. Villiers Stuart.

Mr. Charles Young.
Mr. Lucas.

MR. WINSTON BARRON IN THE CHAIR.

Joseph Hamilton, Esq., called in; and further Examined.

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318. Chairman.] HAVE you any thing to add to your former answer relative to the alterations of Dr. Radcliffe?—I wish to make an addition to the former answer, with reference to the alterations of Dr. Radcliffe, viz. that he has ordered that, in compliance with the recommendation of the Commissioners, that the fee of 10s. 6d. charged for several years past under the name of court-keeper and crier's fee, in decrees, without written sentence, in interest causes, and which was applied to pay the expense of the court and officers, shall be no longer received, or charged against a party or his proctor. I should also state, that he is particularly vigilant in preventing the accumulation of unnecessary rules.

319. Will you inform me whether the regulation No. 5, page 44, as recommended by the Commissioners, has been adopted in this court by the judge; it is as regards the registrar exhibiting to the judge a day-book of the business of the years, and the fees received thereon for the preceding year, and the verifying it on oath?—I am not aware that the regulation has been adopted with respect to the judge, as exhibiting the day-book to the judge; but I am aware that he is obliged to verify his accounts, quarterly, to the board of accounts in this country, and that he receives the amount of fees as for the judge which are now applied to the public service, and he is obliged to account quarterly for those fees, and to remit them to the credit of the Treasury in this country; I cannot mention the precise details; but I know that the case is so.

320. You cannot speak positively as to this regulation, which I rather think extends further than that, having been carried into effect?—Not as relates to the judge.

321. Has regulation 6 been carried into effect, that the office sheet shall contain 90 words, and that in no copy shall more than one fraction of a sheet be charged for as an entire sheet?—That has been always the rule.

322. Is regulation No. 7 carried into effect?—The copy, as I understand, is marked as directed by that, but there is no regulation as to any penalty and overcharge; I know of no instance of an overcharge.

323. Is there any fee demanded for any copy issued from this office unless the charge be distinctly indorsed thereon?—None but what is indorsed, except by the proctor; if he is employed to extract a copy of the will, he charges perhaps 3s. 4d. extraction fee, for his trouble in searching for the will, or 6s. 8d., as the case may be.

324. Does

324. Does not that come, properly speaking, under the head of this regulation?—I apprehend that the case of overcharge referred to here means an overcharge by the registrar's office.

325. Is it usual for the registrar to mark the number of office sheets contained in every copy?—It is, for him or his clerk.

326. And sign his initials?—And sign his initials.

327. Regulation No. 8, is that carried into effect?—That recommendation, I should state, is not carried into effect in its fullest extent; the party is not bound to take out any copy of his own pleadings or affidavits on filing, as is the case in the Court of Chancery, where parties are bound to take a copy of their own affidavits, I understand; but when publication passes in a cause, the old practice still prevails of taking out the copy of the whole pleadings together; the proctor is charged with a copy of the adverse proctor's pleadings when exhibited.

328. But, by taking out a copy of the whole of the pleadings, including his own pleadings, affidavits or proceedings, of course the expense of the client is increased?—Unquestionably.

329. Is a party required, in extracting a will, codicil or testamentary paper deposited in this office, to take a copy of the entire of the paper?—There is always a complete copy of the will annexed to the instrument of probate, but that comes under the head of proctor's charge.

330. Is he required, when wanting a particular portion of the papers I have mentioned, to take out a copy of the whole document?—Any person requiring a copy of the will is required to take out a copy of the whole.

331. You are aware that some wills run to an immense length?—Yes.

332. And taking out a copy would, in many instances, be a very great and heavy expense?—There is no doubt of it.

333. The same being charged at so many words?—So many words in each sheet.

334. I have known an instance myself, relating to my own family, where a will was of immense length, and frequent applications have been made for portions of the said will, on the ground that the taking out a copy in this office was so very expensive; I want to know whether it occurs to you, that there is any reasonable objection to parties being allowed to extract a portion of a will?—I should say not, but the usage of the office has been the contrary, and the registrar has not, I believe, felt himself authorized to change it.

335. The copying of a will of 20 skins, that will sometimes happen?—It will, but it is not computed by the skin, it is by the office sheet.

336. How much would be 100 sheets?—I think the charge is at the rate of 9d. persheet for the registrar's fees, and I think there is an additional charge of 1d. for the clerk's fees, making it in the whole at the rate of 10d. per sheet.

337. And has the proctor any fee on that?—If he is employed to extract a will, he charges a moderate extraction fee merely for his trouble in attending the office to search for the will, and to order the copy.

338. In the case I have mentioned of 100 sheets, what would he, as near as you can form a calculation, the expense altogether?—About 4*l.* 10*s.*

339. Then in case a person only wanted, we will say, three sheets to be copied in the will, if I understand you rightly, it could be done somewhat under 10*s.*, the proctor's fee included, provided it were allowed to copy a portion of this same will?—It would be done, I should suppose, at the same rate per sheet.

340. And under the present circumstances, the party would be obliged to pay 4*l.*?—Or about that.

341. Look at regulation 10, page 44, and say if that regulation has been carried into effect?—I am aware that that regulation has not been adopted, and I conceive that that regulation, as far as it recommends that the registrar shall ingross all copies to be annexed to probates of first grants would be a great inconvenience to the public, from the great number of them that would necessarily be required to be done in the office; at present the duty is distributed amongst the several proctors' officers, and I do not think that the fee recommended would be a sufficient remuneration for the number of clerks that the registrar would be necessarily obliged to keep in order to expedite the public service.

342. He is allowed, under this regulation, 6*s.* for every skin; would not that be sufficient remuneration for the employment of additional clerks in his office?—I take it that this regulation means, that if the proctor chooses to do it, or the party wishes it to be done by the proctor, that the registrar shall allow the proctor

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6s., I conceive that that regulation would bear hard; parchment is a very expensive matter, it is at the rate of 5*l.* per roll, which is about 60 skins, and the proctor pays a scrivener for ingrossing a will at the rate of, I think it is, 2*s.* 8*d.* at the lowest for every 720 words, that is a skin; the scriveners charge an office skin at the rate of 10 sheets of 72 words each, so that the proctor would have to pay in fact more than the 2*s.* 8*d.* for the ingrossment of each skin as calculated by the officer.

343. Your objection to this regulation would be, that it would bear too severely on the profits of the proctors in the courts?—I think it would; and I think it would also be a very great impediment to the despatch of business.

344. Do you conceive it would be an impediment, provided there were a sufficient number of writing clerks for the purpose, as the regulation recommends?—I have already stated that I do not conceive the sum allowed would be a sufficient remuneration for the clerks.

345. Provided there were a sufficient remuneration, would you not consider it a wholesome regulation in other respects?—I conceive not; I conceive the present practice is much preferable.

346. I understand, that under these regulations the object would be to have a public officer made responsible to the public for the accuracy of the document that issued out of his office, that is the meaning of this?—I am aware that it is.

347. At present, I take it, the Commissioners thought there was not sufficient control, which was the reason of their recommending this; does not that strike you as being the object of the regulation?—That seems to me to be the object of the regulation; but as far as my office is concerned, no ingrossment leaves the office to have probate attached to it, that is not compared; and I believe it is pretty generally the practice in the other offices; I cannot speak with certainty.

348. Generally speaking, do you not consider that the control of a public officer would be more wholesome than that of leaving it to the clerks in a private office?—I conceive it would be better to make the proctor responsible for the accuracy of the copy. If this recommendation be adopted, in addition to the time occupied in ingrossing, which is a tedious process, the officer would have the comparison of the will with the ingrossment to make.

349. Recollect that, by this regulation, it is proposed that there should be two parties, distinct parties, controlling the accuracy of the document, the proctor and the registrar; in the way that you at present, if I am right, conduct the business, it is solely on the responsibility of the proctor himself?—Yes.

350. Do you not consider that the public would be safer in having, in addition to the proctor, the control of the registrar, to certify the accuracy of such document?—Of course there would be the greater certainty.

351. Is it usual to have the costs indorsed on the grant of probate of administration, as proposed under regulation No. 11?—It is not indorsed in the probate, but the costs are invariably furnished with probate.

352. But the costs are not indorsed and signed by the proctor and registrar as here proposed?—No, not as proposed.

353. Are the fees taken for rules discontinued, except in cases of orders actually pronounced by the judge or entered on the rule book?—No fee can be charged for a rule unless it is entered.

354. And does the registrar, as you aware, receive more than one fee from the party obtaining such order previous to taking down or entering the same on the rule book?—I think he receives a fee from each party, but I am not positive.

355. Look at regulation 13, page 35, has that regulation been carried into effect?—No, Sir.

356. Does the registrar or any person employed in his office, in any manner, directly or indirectly, practise as a proctor or practitioner in this court?—No, except so far as the registrar extracts probates and administrations, and I am not aware that he does, directly or indirectly; I rather think he does not derive any emolument from any other sources; in prosecuting suits in his own name, or in the name of any one else.

357. Or has he any partnership with any one?—Except that his son is joined with him as deputy registrar; nor does the son practise.

358. Nor any one in his office?—Nor any one in the office; there are none of the clerks in the office connected with the profession further than as clerks.

359. Mr. Villiers Stuart.] Is that a new regulation consequent on this recommendation of the Commissioners?—I conceive it to have been always the practice.

360. Chairman.

360. *Chairman.*] The Commissioners advised that he should not practise even for extracting probates or administrations, but he does so?—He does so; Dr. Radcliffe did not believe, I conceive, that he had the power to interfere. The former registrar, Mr. Upton, did not extract, but the present does.

361. Do you know of any instance where the court has been applied to on account of any delay or omission on the part of the registrar in the discharge of his duties?—No, I do not.

362. Do you know of any complaint made by the proctors, or any proctor, against the registrar, for delay, or against any one in his office, for delays or difficulties?—I have understood that one gentleman in the profession, who, I believe, was not on very friendly terms with Mr. Hawkins, has made complaints of that nature, and I think they are stated in his evidence in the Report, but I cannot say whether they were well founded or not; for myself, I have not found occasion to complain.

363. *Mr. Villiers Stuart.*] But a suitor or proctor is at liberty to make a complaint?—Unquestionably.

364. And it would be inquired into by the court?—It would at once be inquired into. Perhaps I may be permitted here to mention, that I know of no instance of a judicial censure on any of the officers or the practitioners of the court.

365. In case of such grievance being felt, would the application be made in open court?—I conceive that the proper course would be by petition to the judge in open court, or in chamber.

366. *Chairman.*] Have you looked over the table, No. 1, page 45, containing a list of the registrar's fees?—I have.

367. Are you aware if that table is strictly adhered to?—I rather think it is not; but I believe that there is not much difference between that and the existing table.

368. Can you at this moment point out precisely the difference?—In fact, those appear to be the former fees reduced to British currency.

369. And you cannot precisely at this moment point out the distinction between the fees charged and those in the table?—I cannot, but I apprehend there is very little difference; with respect to the last fee mentioned, "dispensation of faculties to hold plurality of livings," that is a thing, I believe, which now seldom occurs.

370. Direct your attention to page 53, as to the Court of Faculties?—I cannot speak as to any thing connected with the Court of Faculties; the only proctor's duty connected with the Faculty Court in practice is extracting faculties and marriage licences.

371. When does this court sit?—The term usually commences the day preceding the common law terms, and the sessions, as they are termed by the court, are continued twice a week, as long as the Chancellor or the Master of the Rolls sits. There are generally 12 sessions in each term, except the Easter term, in which there are but 10 sittings or sessions.

372. You take the term to be synonymous?—Sessions or sittings are the same, and the judge attends every Tuesday, Thursday and Saturday morning for the purpose of swearing executors and administrators throughout the year, and on any other day; if any thing of necessity should arise, he is always to be seen at his own house; in short, he does every thing he can to facilitate the public business.

373. On an average, how many hours a day would you suppose for the last year or two years that the court sits, of sitting days?—The court sits as long as there is any thing to do; I have known the court sometimes to sit as late as five or six o'clock, but I should say, that perhaps the general run of business is probably from two to three; the sittings terminate about three, or perhaps four o'clock; and I should also say, that in vacation there are particular days appointed, which are called caveat days, on which the court sits for any matter that may arise during the vacation; but at all times, if any special cause arises, the judge, if applied to, will entertain the subject.

374. *Mr. Villiers Stuart.*] Is the judge enabled to get through the whole of the business in this session, or is there an arrear of business?—Never any arrear of business.

375. *Chairman.*] I have heard it complained of by some suitors in this court, that the business is frequently deferred from day to day, the court rising at the same time at an early hour, by which great additional costs are incurred by the suitors; do you believe that to have any foundation in practice?—In practice, I do

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not think it is the case; if such case did occur, it might probably be caused by the party himself, or by the acts of the opposite party.

376. Is it usual in these courts, and perhaps others, to give fresh fees or refreshers to the advocates when a cause is deferred from day to day?—It is.

377. Do not the technical forms of the court give greater facilities for those delays?—I should rather say that the course of practice would necessarily create some delay, because it is impossible when a case is opened, if there have been many witnesses examined, that all the depositions can be read in one day, but the judge always meets the convenience of counsel and the proctors, and will sit from day to day if necessary; but with respect to refreshing fees, I do not think they are ever charged or allowed for, except the advocate appears, and something is done in the cause on that day.

378. Have you ever known of refreshers, as, I believe, they are technically called, being given, where the counsel did not actually attend?—No, I have not; the registrar would not allow them, without seeing the certificate of counsel.

379. I am inclined to think that I shall be able to produce a suitor in the court who attended the court himself, and whose cause was put off, for non-attendance of his counsel or advocate, and the fees were charged for the days, and a refresher charged for the next attendance in court of the same counsel; what control could there be in the registrar's office to prevent a recurrence of a similar act?—The registrar would require and always does require the certificate of the counsel for every fee which is charged as for the counsel, and I do not conceive that any counsel would give his certificate, unless he actually received a fee.

380. I do not question his receiving the fee, I only object to his receiving the fee twice, where he did the duty only once, and where the cause was actually retarded from his non-attendance, or in part retarded?—I am not aware of any case of the kind.

381. Is there, under the present regulation of the court, any sufficient control to prevent a recurrence of such an act as that?—I think not; I think such a regulation might be adopted by the registrar taking down in the rule book on each day the appearance of the counsel. When a counsel does state or argue a case, it is always taken down, that on such a day Dr. So-and-so stated the case of the promonent. It is always the duty of the counsel to attend during the reading of the evidence, and the registrar is also bound to take down the evidence; and I conceive might, with great facility, at the same time take down the attendance of the counsel, and a check might be established in that way.

382. It is not usual for Roman Catholics to practise in these courts?—It is not.

383. Is there any law or oath by which they are prevented from practising?—There are oaths, the oaths of supremacy and abjuration, which are taken by every proctor; and I am not aware how far the provisions in the Emancipation Act would go to exclude Roman Catholics from practising in the courts; I rather think there is a clause to the effect that no officer or person belonging to the Ecclesiastical Court shall be of the Roman Catholic persuasion; but I cannot speak with certainty.

384. Do you see any religious objection to their practising in the courts?—None whatever, as far as relates to the voluntary jurisdiction; with respect to the episcopal or clerical jurisdiction, I am not prepared to say whether it should or should not be.

385. Mr. Villiers Stuart.] That only relates to the Court of Faculties?—And the diocesan courts.

386. Chairman.] As to the Court of Prerogative?—As to the Court of Prerogative, I conceive not.

387. Then, I am to understand you that no case has occurred during your practice where a Roman Catholic might not as well and as conscientiously and as properly conduct any business in which you were concerned as a Protestant?—Certainly not, if otherwise competent.

388. Although called an Ecclesiastical Court in modern times, it has, strictly speaking, nothing to do with ecclesiastical duties?—I think not; I think it is now, in fact, a civil court.

389. There are no Roman Catholic advocates in the courts?—No, none.

390. And the same answer would apply to advocates that you have already given as to proctors?—Exactly.

391. Mr.

391. *Mr. Villiers Stuart.*] Appeals are, I believe, made from the decision of this court to the Court of Delegates?—Yes.

392. The right of appeal is unlimited?—Unlimited.

393. Is it not felt as a grievance very often that appeals are made unnecessarily for the sake of delay?—Certainly, sometimes they are; or perhaps for the purpose of extorting a compromise, or inducing a compromise.

394. Has any alteration been made by the judge of this court, in pursuance of the recommendation of the Commissioners, that the right of appeal shall be restricted?—The judge rather encourages the right of appeal; I conceive it to be the right of the subject, and I have frequently heard him say that if the party is dissatisfied with his judgment, there is another tribunal where it may be reviewed.

395. Do you think the right might still be preserved, but with less inconvenience to the public, if there were some costs, or otherwise, to be imposed where the appeal turned out to be frivolous or vexatious?—At present the appeal is always carried on at the peril of costs. If the superior court consider it as frivolous or unnecessary, they can visit the costs of the appeal upon the party.

396. Can you state what the proportion of appeals is to the decisions by the judge?—I should say they are very few in number, perhaps not as many as six or seven in the year, or eight at the utmost.

397. What is the number of causes tried in the course of the year?—I cannot take upon myself to state the average number.

398. *Chairman.*] You have looked over the evidence of Mr. Crampton, the present judge?—I have not lately looked it over.

399. He recommends that evidence shall be taken *viâ voce*; do you conceive, from your knowledge of these courts, that it would be an improvement to have that advice followed up?—I think, upon the general principle, that *viâ voce* evidence is preferable to depositions in writing.

400. Mr. Crampton was a great many years an advocate?—He was some years an advocate, but he was not generally engaged; his practice in the other courts was extensive, but, except on the hearing of a cause, he was not engaged generally.

401. Do you think it would be a wholesome regulation to confine the advocates in this court to practise, as in England, at this court alone?—I do not think that the emoluments to be derived from the practice of the court would afford sufficient remuneration to any barrister for his attendance at that court alone.

402. Do you not conceive that a great inconvenience often arises from the distance of these courts from the other courts of law in Dublin?—No, I do not think it has been practically felt, for the court sits at an early hour, and, generally speaking, there is a day for advocates' motions, which I ought to have mentioned before; during the term, Thursday is the day appointed for advocates' motions, if any arise.

403. *Mr. Villiers Stuart.*] Do you think that the taking of testimony *viâ voce* would be productive of much delay, or that the business would be as speedily transacted as at present?—I think, from what I have heard of the Court of Admiralty, where the registrar enters the *viâ voce* testimony as it is given, and in administration causes in the Court of Prerogative, where it is also entered on the acts in the rule book, that it would occupy some time, because the registrar must be particular in taking down the evidence accurately.

404. But do you think the judge would be enabled to get through the business, taking the testimony *viâ voce*?—I should say it would be analogous to the time occupied in trials at common law; as the mode of taking the evidence at present is in secret and private by the examiner in his chambers, the time of the court is, I should say, rather saved by the present mode.

405. But as to the reading of the evidence?—The registrar does not take down the evidence as read, he merely takes down that such a witness was read to such depositions, or such an interrogatory.

406. *Chairman.*] But if the case were proved, as it is proved in the courts of common law, do you conceive that the business would be rather expedited than delayed?—I conceive it would.

407. *Mr. Villiers Stuart.*] You do not see any particular reason why there should be a different mode of taking evidence in this court from other courts?—My opinion is, that *viâ voce* evidence is the better mode of eliciting the truth.

408. *Chairman.*] It is not usual for a jury to be called in these courts to decide matters of fact?—The judge decides both the law and the fact, and I have heard

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Dr. Radcliffe express his regret that he had not the power of sending questions to a jury.

409. It must place the judge in a very awkward position sometimes?—It of course increases his responsibility, I should say.

410. And must in many instances be unsatisfactory to suitors, there being only a single person to decide?—The judge always assigns his reason for his judgment.

411. You think that in matters of fact it would be a wholesome change to have the assistance of a jury?—Where there was conflicting evidence as to matters of fact.

412. And the judge to be bound by the decision of the jury as to matters of fact?—As to matters of fact; but I think he should have the power of directing a new trial, if necessary, on the application of either party, as practised in other courts.

413. Do you think that commissions are issued now rather more frequently than what is absolutely necessary?—No, less frequently than they have been, on account of the abridgment of the number of pleadings, and Dr. Radcliffe is very particular in his inquiries as to the necessity of a commission, and before granting a commission he directs that the witnesses shall be called upon to come to Dublin to be examined, and tendered their expenses; but in some cases it may be very difficult to procure the attendance of witnesses in Dublin; for instance, it frequently happens that medical gentlemen are witnesses to a will who may be in extensive practice in the country, and whose demands for adequate remuneration for coming to Dublin would be more expensive than issuing a commission.

414. Do you conceive that the abolition of what are called formal pleadings would be attended with beneficial effects?—I do not look upon it that we have any thing like a formal pleading; there are but two pleadings, the one is called *wish* as the primary allegation, which is, in a testamentary suit, the party setting up the will alleges the execution of the will, and the sanity of the testator. The party alleging intestacy alleges the fact of intestacy, and the degree of kindred which he claims to the deceased, if this might be called a formal pleading. The allegation setting forth the will is what is called in this country the *condidit*. You are at liberty to allege in the pleadings all the facts connected with the drawing and execution of the will.

415. Would it not be less expensive and equally as efficacious to proceed by petition in such cases as you have just now stated?—There are certain cases in which they proceed by what is called an act on petition, a petition verified by affidavit; but I do not think that it would be a proper method to try the validity of a will on affidavits.

416. I am only alluding now to applying the system of proceeding by petition, in preference to the system of pleading in common cases and in ordinary transactions; it is more usual in the Prerogative Court to proceed by pleading than it is in the other courts, and it is thought that the proceeding by petition will be more expeditious and less expensive?—That, I should say, would depend upon the nature of the case.

417. But, generally speaking, you approve of proceeding by petition in ordinary cases?—In ordinary cases, and that is the mode of proceeding in ordinary cases. As to a question which was asked yesterday, as to general admission into the profession, and the profession being overstocked, I beg to state that the profession is, perhaps, more peculiarly circumstanced than any other. The business in its nature is very limited; the physician, the surgeon and the barrister, have the whole community to deal with; it is only under peculiar circumstances that we have to deal with the public. And there is another matter that has occurred to me since, with reference to the question as to the apprentice fee; I should state that, in addition to the apprentice fee paid by the gentleman who wishes to become a member of the profession, he has also to pay stamp duties on his indentures of 100 *l.*; he also must of necessity be admitted a notary public before he can be admitted to practise as a proctor; and he has an additional stamp duty of 25 *l.* to pay upon the faculty authorizing him to act as notary public, which is for the special purpose of enabling him to act as proctor; and he has a further stamp duty, on taking out his certificate of proctor, of 25 *l.* also; in addition to that, when sworn a proctor under three years, he pays an annual license of 3 *l.*; a proctor above three years' standing pays an annual license of 8 *l.* similar to the solicitor's.

Michael

Michael Mortimer, Esq., called in; and Examined.

418. *Chairman.*] ARE you a proctor of the Ecclesiastical Courts of Waterford?—I am, of the Ecclesiastical Courts of Waterford and Lismore, it is a united diocese.

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419. Are you also a solicitor?—I am.

420. You practise in this court, in the Ecclesiastical Court?—I do.

421. How long have you been a practitioner?—About 20 years.

422. Who is the judge of that court?—The Rev. Richard Jones Hopson is vicar-general.

423. Is he bred to the law?—No, he is a clergyman.

424. How often does the court sit for the despatch of business?—Once a week when there is business; but there is not always business once a week.

425. Once a week throughout the year?—Throughout the year.

426. On an average, from your knowledge, how often does it sit for the despatch of business?—I could scarcely say; perhaps once a month.

427. How long has Mr. Hopson been the judge of this court?—I should think more than 10 or 12 years; he was first surrogate to the late Dr. M'Dougal, when he was vicar-general; and he was then appointed vicar-general on the death of Dr. M'Dougal.

428. Was Dr. M'Dougal bred to the bar?—He was.

429. Then, of course, the person who is judge of this court is not necessarily conversant with law at all?—Not necessarily called to the bar; they frequently are doctors of law. I really cannot say whether Mr. Hopson is a doctor of law or master of arts; I believe only a master of arts.

430. Is the judge of this court necessarily conversant with law?—It is quite necessary that he should be conversant with law.

431. Is there any test?—No, I believe not; it is usually in the gift of the bishop.

432. Is the judge paid by a salary or by fees?—By fees.

433. *Mr. Villiers Stuart.*] Are the public likely to suffer from a person ignorant of law being in that situation?—They might, certainly.

434. *Chairman.*] You are aware that the practice of paying judges by fees is one which is condemned in all the superior courts?—Yes; not now practised in any of them.

435. Do you see any reason for continuing it in minor courts, such as this?—No, none whatever.

436. Do you conceive it to be a mischievous practice; that it might lead to mischief?—I cannot say that it would lead to mischief with Mr. Hopson.

437. Do you conceive that the practice of paying judges by fees might lead to mischief in some instances?—Certainly, I think it would.

438. Would you please to tell the Committee what fees are paid to the judge in this court?—I think it is 10s. for each document to which the consistorial seal is attached, and 1s. for each affidavit sworn.

439. Have you any means of ascertaining what the amount of these fees may be annually?—None, except by report.

440. Having practised for nearly 20 years, you might form a rough calculation of your own?—I have always understood that they never amounted to more than 100l. a year in that diocese.

441. Have they increased or diminished of late years; has the business increased or diminished?—The court business has diminished considerably, but the fees very little upon court business; to the judge almost altogether upon probates and administrations, which generally are not court business; they are what is called office business, and they are just as enormous as ever, rather more so in consequence of the Stamp-office being particular in compelling people to administer.

442. *Mr. Young.*] To what do you attribute the decrease principally in the business of this court?—I cannot form an opinion as to what has been the occasion of the decrease in the business of wills and marriages, but the decrease of the great quantity of business has been in consequence of the Tithe Composition Act, for nine-tenths of the business which occupied the court previously was in tithe suits, but upon these I should say the judge had no fees.

443. We are talking of the business?—I cannot say why it is there are so few disputed wills and so few suits respecting marriages, and those are the only questions which come before the court since the tithe business was done away with.

444. *Chairman.*] You are aware that a Bill passed the Legislature last year,

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which is likely also to diminish the business of the court in other respects; the amended Civil Bill, commonly called Lynch's Bill, to transfer to the barrister jurisdiction in wills in certain cases?—I have heard of such Act, but I know there has been no case under it before the barrister in Waterford.

445. Mr. Villiers Stuart.] Within what period have you observed this diminution in the business of wills and marriages?—Within these last 10 years; I think it is nearly 10 years since we have had what I might call a good case in the court.

446. Chairman.] There is a distinction between what is called the voluntary jurisdiction and the clerical or episcopal jurisdiction of the court; you could not from memory tell me what fees are derivable from the clerical, and what fees may be derivable from the voluntary jurisdiction of the court?—I could not possibly form an opinion.

447. Is it called clerical or episcopal jurisdiction?—I should suppose that those refer to the questions as to the clergy themselves, the conduct of the clergy.

448. There are few cases of that kind come before the court?—No, I do not remember one.

449. Although this is called a clerical or ecclesiastical court, in practice is it not a court for the decision of civil business?—It is.

450. Who appoints the registrar?—The bishop.

451. Is he a legal person?—No, he is a clergyman.

452. Has he a table of fees in his court for the inspection of the public in any public place?—I think not, I never saw it.

453. Who taxes the costs in this court?—The registrar or his deputy; and then the judge certifies them; but if a bill of costs is required to be produced as a taxed bill of costs, the certificate is signed by the judge.

454. Mr. Villiers Stuart.] Who appoints the deputy?—The registrar.

455. Chairman.] How many proctors are there at present in the court?—But two.

456. How is a man eligible to practise in the court?—He must be admitted by the judge.

457. And what is the rule for admission?—Merely the will and pleasure of the judge, the judge being satisfied that the person applying is a competent and proper person; I know that an apprenticeship is not necessary, because I was admitted extremely young, on the death of my father, and before I had served my time; I was an apprentice at the time.

458. From what you state, I understand that proctors are not necessarily attorneys or solicitors?—Not necessarily.

459. They may know as little of the law as the judge?—Certainly.

460. Do you not conceive that it would tend to great uniformity of practice if these courts were all consolidated and placed under some public control?—Yes, I think they might be improved by that.

461. And that the person appointed to this responsible situation should undergo some examination or criterion by which his eligibility could be judged of?—It would ensure the appointment of proper persons, certainly.

462. Do you consider that it would tend to the advantage of the public, and particularly of professional gentlemen, to have all wills under the control of one great public office in the metropolis, rather than have them separate in these country courts, as they are at present, all over the kingdom?—I think it is a great convenience to persons, where the property bequeathed by will is of small amount, that they should have a place convenient to them for depositing them, and getting copies of them.

463. But it does not necessarily follow, that because they were deposited in Dublin, persons might not, at the same expenses, and perhaps more easily, get copies of them from Dublin, by applying to a professional person?—They need not apply to a professional person in Waterford for a great portion of the probates and administrations in Waterford; there is no professional man employed; they go to the registrar, exhibit the will to satisfy him that it is genuine, and he gives probate to the executors and administrators without the intervention of a professional man.

464. Do you not think that this practice is highly objectionable?—Very objectionable; I have always thought so.

465. Is it not the practice of a person coming and presenting a paper which he says is a will, without any knowledge of the party granting the probate, likely to lead to deception and forgery, and other matters that would be highly injurious to the public?—It might, but it saves the executors, in general, a great deal of trouble.

466. You

466. You are aware that under Mr. Lynch's Civil Bill Act of last year, this portion of the jurisdiction, when it has come to be known and acted upon generally, will be greatly circumscribed for wills where there are only small sums?—I understand that the jurisdiction given by that Act was merely as to the recovery of legacies. The Ecclesiastical Court, in my memory, never entertained any proceeding for the recovery of legacies; those, I believe, were solely recoverable in a court of equity; and it is a great relief to persons of small property to be enabled to recover by the Civil Bill Court such legacies where they were previously obliged to apply to courts of equity; I think it necessary to add, that I do not direct my attention to that portion of the Civil Bill Act of last year concerning wills.

467. Do you not think it would be desirable to have some public control and responsible officer over the registrar and practitioner of these courts?—Certainly.

468. Have you ever directed your attention to what is called the peculiar jurisdiction of some of the Ecclesiastical Courts in England, as distinguished from the jurisdiction they exercise in Ireland?—No, I have not, Sir.

469. Are you aware whether there is any peculiar jurisdiction in the Waterford and Lismore Court, different from that of the Ecclesiastical Courts or Diocesan Courts in Ireland?—No; there is what is called a peculiar jurisdiction in Lismore; but the reason is, that the Archdeacon of Lismore has the power of granting marriage licenses and administrations from the parish of Lismore, and that they call in that diocese the peculiar jurisdiction of the Archdeacon of Lismore.

470. Is it the practice in the Ecclesiastical Court, that the extracting of probates and administrations by the acting registrar of this court should be taken out by himself, and that he should charge the proctor's fees, as if the proctor had attended; is there such a practice?—It is the practice of the registrar to do all the proctor would do, if he were employed, without employing one; but I cannot say that he charges the fees of a proctor.

Mercurii, 17^a die Maii, 1837.

MEMBERS PRESENT.

Mr. Villiers Stuart.
Mr. Sergeant Jackson.

Mr. West.
Mr. Hamilton.

MR. WINSTON BARRON IN THE CHAIR.

John Hawkins, Esq., called in; and Examined.

471. *Chairman.*] YOU are deputy registrar of the Prerogative Court in Ireland?—I am, jointly with my son.

472. How many years have you been deputy registrar?—Since July 1801.

473. You have had an opportunity of reading the regulations recommended by the commissioners that examined into this court in Ireland?—Yes, they have been read to me.

474. And you have had sufficient opportunity of considering the same?—Yes, I have.

475. Have you read the fees recommended to be taken in the table No. 1, subjoined to this report?—I am sure they have been all read to me, but I have no recollection of them now; I am blind, in total darkness.

476. Are you aware whether the fees recommended by those commissioners have been adopted by the registrar of the court?—They have not.

477. Has any alteration taken place in consequence of such recommendation in respect of fees?—I rather think not; there have been some alterations by the judge, and I have brought a copy of them with me, and the gentleman with me is ready to prove them; they do not apply to the fees.

478. Will you be pleased to hand in that paper?—Yes.

479. What is the title of it?—"Attested copy, Rules of court, made by the Right honourable Dr. Radcliffe, Judge of Prerogative Court in Ireland, in conformity with the recommendations of the Commissioners of Judicial Inquiry contained in their 19th Report."

*Michael Mortimer,
Esq.*

4 May 1837.

John Hawkins, Esq.

17 May 1837.

John Hawkins, Esq.

17 May 1827.

480. *Mr. Villiers Stuart.*] Does that contain a list of all the recommendations which have been adopted by the judge of the Prerogative Court?—I think it does since the Report; this gentleman who is with me compared them with the record book, and saw them attested.

481. *Mr. Hamilton.*] Were those rules prepared in consequence of that Report?—Yes, in conformity with the recommendations of that Report.

482. *Chairman.*] I am therefore to understand that the fees recommended in table No. 1, as far as your knowledge goes, have not been adopted by the deputy registrar in this court?—You are, if I form a correct opinion of the table.

483. Does your memory go to the same effect as regards table No. 2; does your memory bring you at the present moment to the nature of the recommendation No. 2, contained in this Report, as regards the Report?—It does not.

484. I will read it, "That of the several fees heretofore demanded, taken or accepted in the office of registrar, such only shall be continued and be deemed lawful as are comprised in the table No. 2, subjoined to this Report, and that the receipt of any other fee, gratuity or emolument for the service therein specified by any person belonging to or employed in this office shall subject such person to a pecuniary penalty for each offence, and further disqualify him from ever acting in the office or the court to which it belongs." The table No. 2, I will not read at length, because it contains a vast number of items, too many to bear in mind, and compare with the fees at present adopted, but as that table must have been read to you, you can answer me simply, yes or no, whether that regulation which I have now read has been adopted in place of the old regulations and fees; can you say from your memory whether such is or is not the case?—I would rather say that it was not, from any notion of it; if you read me a few of the items I could tell you.

485. "For every probate or administration 6*s.* 2*d.* British currency?"—That is not adopted; you will excuse me giving you so much trouble, but it is from my infirmity.

486. I will read regulation No. 3, "That all fees so established shall be considered as fees of the registrar alone, and constitute the fund for payment of all persons employed under him, and for the disbursements and expenses of the office;" is this rule attended to?—It is not.

487. I come now to recommendation No. 4, "That a fair and legible table of the established fees shall be constantly exposed in some conspicuous part of the office; and that on proof made on summary application to the court, that such exposure has been neglected for two successive days, the registrar shall be liable to a pecuniary penalty on account of such neglect;" are you aware whether this rule is attended to?—It is not.

488. I come now to regulation No. 5, "That on or before the first sitting day of the court in Michaelmas term in each year, the registrar shall exhibit to the judge his day-book, in which are entered the several services performed in the office, and the fees received thereon for the preceding year, and shall verify the same upon oath, to be administered by the judge, and to be entered in such book, as containing true, full and perfect entries of all business done, and fees received, according to the established practice of the office, to the best of his knowledge and belief; and that such day-books shall be considered as records of the office, accessible to the public, and as such shall be preserved therein;" are you aware whether that regulation is attended to by the registrar?—It is not.

489. Regulation No. 6 states, "That the office sheet in this department shall contain 90 words, and that in no one copy shall more than one fraction of a sheet be charged for as an entire sheet;" are you aware whether that regulation is attended to?—It is, as regards the first 90 words, but not as to the fractional part.

490. *Mr. Hamilton.*] The fractional parts continue to be charged?—Yes, I am sure it is so.

491. At what rate are those fractional parts charged?—A sheet, if it exceeds 12 and goes on to the 13th, the 13th is charged.

492. *Chairman.*] Regulation No. 7 states, "That on every copy made in this office the registrar or his clerk shall mark the number of office sheets contained therein, and sign his initials after such marking, for the correctness of which the registrar shall be responsible, and that the proctor shall be bound to ascertain that such marking is correct; and, in case of overcharge, the party or person overcharged may recover a certain penalty against the registrar or proctor at his election

election; and that no fee be demandable for any copy issued from this office, unless the charge be distinctly indorsed thereon, specifying the manner in which it is made up;" is this regulation attended to?—Not more so than it was antecedent to that report.

493. No change has taken place?—No.

494. Regulation No. 8 states, "That no party shall be required to take out or pay for any copy of his own pleadings, affidavits or proceedings, or be compelled to take out or be charged with any fee for copies of any will, record, order, decree or document in this office, unless where some ulterior proceeding is to be founded thereon, or the same shall be necessary under any rule of court, but that he shall be at perfect liberty to judge whether or not it be necessary to provide himself therewith, but that it shall be lawful for the registrar to require a person exhibiting any pleading in answer to a former pleading, to pay for and take out a copy of such former pleading;" are you aware whether this rule has been attended to?—There has been no change in the practice with regard to copies.

495. Regulation No. 9 states, "That no party requiring an extract of any will, codicil or testamentary paper deposited in this office, shall be required to take out or pay for a copy of the entire, but shall be at liberty to take out a copy of such portion thereof as he shall deem requisite for his purpose, and shall be charged for the same according to its length, at the rates comprised in the subjoined table No. 2;" is this regulation made?—It is not.

496. Regulation No. 10 states, "That it be the registrar's duty to make out all ingrossed copies of wills to be annexed to grants of probate or letters of administration, and that he shall employ in his office a sufficient number of writing clerks for that purpose; so that no person requiring same shall be unnecessarily delayed, but that, to meet the convenience of parties, the proctor be at liberty to prepare ingrossed copies of wills to be annexed to first grants of probate or administration uncontested, for the comparison and accuracy of which the registrar shall, however, be responsible; and that in such case the registrar shall deduct and allow out of the fee payable to him for such ingrossed copies, at the rate of 6s. for every skin thereof, the person making the ingrossed copy to supply the parchment without any additional charge;" has this alteration taken place in conformity with that recommendation?—None whatever.

497. Regulation No. 11 states, "That the seal of the court shall not be affixed to any grant of probate or administration, unless the costs of obtaining such grant shall be endorsed thereon or annexed thereto, signed both by the proctor and the registrar, such cost not to include those incurred (if any) in previous litigation or otherwise;" has this rule been attended to?—It has not.

498. Regulation No. 12 states, "That the fees heretofore taken for rules shall be discontinued, except only in cases of orders actually pronounced by the judge or entered in the rule book; and that in every such case the registrar may demand and receive one fee from the party obtaining such order, previously to taking down or entering same in the rule book;" has this regulation been attended to?—There has been no change of practice.

499. Regulation No. 13 states, "That in cases of appeals from any decision of the Court of Prerogative, when any party shall require a transmiss to be made out for the Court of Appeal, such party shall be at liberty to bring in to the registrar such office copies of the several pleadings and proceedings in that cause as shall have been previously obtained, and that same be made use of as part of the transmiss, and the number of additional sheets only be charged for; and that should any part thereof consist of depositions, such part shall be certified to the registrar as a faithful copy by the examiners, and thereupon the registrar shall attest the entire, the registrar and examiners being respectively responsible only for the accuracy of the copies of such parts thereof as have been made in their respective offices; and that for recomparing and attesting office copies formerly issued to the proctors, and brought in to form part of the transmiss, the registrar and examiners be respectively allowed to charge a fee of twopence per sheet in addition to the charge for supplying the remainder of the transmiss;" has any alteration taken place in conformity with this recommendation?—There has not.

500. Regulation No. 14 states, "That neither the registrar nor any person employed in his office shall in any manner practise or act as a proctor or practitioner in this or any other court in extracting probates or administration, or in prosecuting suits, either in his own name or that of any other person, or have any partnership with any person so practising, or derive any emolument from the carrying on of any

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such practice, and that any violation of this regulation by the registrar or any person employed in his office, shall subject such person to a pecuniary penalty, and further disqualify him from ever acting in the office or the court;" is this regulation attended to?—There has been no change made in that with respect to the form of practice.

501. On this point, I would ask you, does the registrar or either of the deputy registrars at present practise in this court, either directly or indirectly?—They do in the extracting of probates and administrations.

502. Do they in prosecuting suits?—Certainly not.

503. Either in their own name or that of any other person?—No, in no respect whatever.

504. They derive no emolument?—They derive no emolument from suits.

505. And have no partnerships?—They have no partnerships, or any emoluments, under any circumstances connected with suits.

506. Mr. *Hamilton*.] What they do is only ministerial?—Nothing more.

507. *Chairman*.] The extracting of probates and administrations is not necessarily ministerial?—Perhaps I do not exactly comprehend the word ministerial.

508. In their duties as registrar it is not as a matter of course that they should be the parties to extract probates and administrations?—I do not think it is.

509. But it is the ancient practice of the court?—It is the ancient practice; and I conceive we have a right, even as proctors; as registrars, I do not pretend to say, but being proctors of the court; but it is not necessary, as you put it to the office of registrar.

510. The office of registrar or deputy registrar is all the same now as regards extractions, probates and administrations?—Yes.

511. And are paid for these extracts?—Of course.

512. Separately?—Yes.

513. And it was conceived by the Commissioners, that ought to be placed in other hands; I am not asking whether their recommendations are right or wrong, but they conceive it would be useful to separate that from their regular official duties, and I am only asking whether that has been done; I understand the witness says not?—It has not.

514. The deputies are proctors of the court?—They are.

515. Then it is their capacity more as proctors of the court, you conceive, that they extract these probates and administrations, than as deputy registrars?—Why I do not take upon myself to say, whether they would not have the right as registrars, because I believe it is a general practice through England and Ireland, for the registrars who are not proctors, to extract; therefore, I do not know how I can well sever them.

516. Mr. *Hamilton*.] If as proctors they perform that business, is it a portion of that which is called the voluntary jurisdiction, or the contentious jurisdiction of proctors?—It is certainly not contentious; they could not have any thing to do with it if it was.

517. The voluntary jurisdiction is described, as comprehending ministerial acts in the common course of business?—So I conceive.

518. So it is in what is called the voluntary jurisdiction, that they act as proctors?—Yes, it may be so; I do not attempt to separate them one from the other.

519. *Chairman*.] We come now to regulation No. 15; "That when any suitor or proctor shall think himself aggrieved by any practice, demand, delay or omission of the registrar, or any person employed in his office, he shall be at liberty to submit the same to the court in a summary way, by petition and affidavit, to be answered by the person complained of; and such application shall be disposed of on the next court day in open court; the costs of such application to be paid by the petitioner or respondent, at the discretion of the court;" has any regulation been made of this sort by the court?—I think not; for I think the party or the proctor had the same right before; I conceive they always had a right to complain to the judge, if any delay or misconduct was adopted in the office.

520. I was only anxious to know whether any new rule was made in conformity with this recommendation of the Commissioners?—There has not been.

521. You are, perhaps, aware that the Commissioners recommended that the taxation of costs should be removed from the registrar to some other officer; has that been attended to?—It has not.

522. Is not the registrar at present directly or indirectly interested in a portion of those costs which he taxes himself?—He must, of course; because his own fees

of the office are charged in those costs; but those fees are so well understood that there can never be any change through oversight.

523. It has been as a general principle laid down in the other courts of law in Ireland, that all officers should be paid rather by salaries than by fees; I believe that has been established, generally speaking?—I believe it has.

524. Do you, from your experience, think that it would be beneficial to the public, or the contrary, to have a similar principle established in the Prerogative Court?—I cannot well take upon myself to say; I think if it is found otherwise to be generally serviceable, I do not see why it should not apply to the Court of Prerogative.

525. Mr. *Villiers Stuart*.] Is it not a fact, at the present moment, in many cases, thousands of pounds are acquiesced in and settled without any taxation at all of the costs?—I believe there are very few taxations as compared with the general business.

526. Can you account for that in any way?—I cannot.

527. In other courts the costs are always taxed, are they not?—No, I believe not; they are not more frequent in other courts.

528. Where heavy sums are involved?—Not more frequently in other courts than in ours; I believe the general practice is, that costs are settled without taxation, in all courts.

529. *Chairman*.] Is there a power at present to examine on oath the proctors or witnesses on behalf of proctors, regarding their costs before the registrar?—Not before the registrar, as he has no power of swearing.

530. Or for making any charges?—The registrar has no power to take oaths.

531. It was suggested that you had a statement to make to this Committee with regard to a certain document or book that was not produced to the Commissioners of Inquiry into this court in Ireland; do you wish to make any explanation in the Committee why this book was not produced?—I do.

532. You are at liberty to make it?—I never refused to produce any book or document connected with my office of registrar; I was called on to produce a cost book, which I conceived to be of a private nature, totally unconnected with my office of registrar.

533. As connected with your business as a proctor?—Yes; it was a private account book; it was by letter I was applied to; I answered that letter; (and I feel—I do not like to express any feeling on it) that letter was kept back; I will not say suppressed; it was kept back in the Report, though my son was examined to it; and that letter gives the reason for my not producing the book; it is dated the 24th of November 1829.

534. You will please, as far as you wish, to explain, and as concisely as you wish; you are at perfect liberty to say why that book was not produced?—Will you allow me to read that letter; perhaps it will be more concise than I could express myself: "Gentlemen; I have to acknowledge the receipt of your precept of yesterday, requiring me to transmit to your office the book in which the costs of probates and administrations issued by me in the years 1825 and 1826 are entered, and but for which precept I should now be on my way to London for the benefit of my health; I lament exceedingly my inability to comply with your requisition, being inadequate, from blindness, to examine that book, which has no manner of connexion with, or relation to, my office of registrar, or any of my official duties, and to select therefrom entries of a private nature, which I could not, in justice to many persons therein named, expose to public examination; should a proceeding of this kind be supposed necessary towards the attainment of public justice, I trust that it will not be sought to be imposed on an individual so heavily afflicted as I have been by the act of Providence; and I have the less reluctance in making this communication, when I reflect that such information as appears wanting can be had through other members of this profession." In addition to my blindness, I was generally in such a state of health that I was ordered by my medical attendant to quit every kind of business, and I was, in fact, at the time I was under this examination, I was, perhaps, the three other days in my bed, and I was ordered to give up all kinds of business, and to come up to London, not only to consult about my blindness, but my general state of health, and this letter has been altogether omitted from the Report.

535. You state, in this letter, that you cannot select therefrom entries of a private nature; it would appear from that, that in your book there were entries both of a private nature as a proctor, and of a public nature as registrar?—That

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construction may be drawn from the letter; that never occurred to me, for there is nothing to connect it with my office of registrar in it; it was written at the moment, under great distress of mind.

536. Then I am to understand, that that book which was so refused to be given up was solely relating to your private business as a proctor?—Yes, solely as a proctor.

537. And have you not now in your possession any book or entry for the years 1825 and 1826, of the nature which the Commissioners required, of a nature bearing on the public entries, any book containing the entry of your duties as a public officer?—The book that was required you will see by the precept or the letter they wrote me; but the public books of the office were in their office at that time, and they had them; they had the public books for those very years, as far as my recollection serves me.

538. It appears strange that the Commissioners should require you to produce a book of your private business as a proctor, if they were examining you on your public duties as registrar; is such the fact?—A great deal of their examination appeared to me very strange.

539. Is it the fact that they did not require the books where the public entries of registrar at that time were contained?—All they required were given, except certain entries in my books which were lost, as stated in my evidence.

540. The Commissioners state, that they found great difficulty in ascertaining on what principles the allowances were made in many cases of costs; and they state also, that in this court the remuneration is much higher in general than those of the superior courts of equity for analogous services; have you ever had an opportunity of comparing the charges for analogous services in the higher courts of equity and your court?—Not within my recollection; I have had more information from the evidence of the two solicitors who were examined on that point, than in any other way.

541. Before whom?—Before the Commissioners who made that 19th Report.

542. You are not prepared to deny that higher rates of charges are made in the Prerogative Court than in the Court of Chancery for similar or analogous services?—I am not prepared to state whether they are higher or lower, except as regards briefs, which I can charge my memory with; from that evidence they are higher in the Prerogative Court for drafts, and they are the same for copies.

543. Has there been any alteration made with regard to the emolument of apprentices in the deputy registrar's office; it was the rule or custom when this Report was made that the deputy registrars had the emolument of taking apprentices, I believe the sole emolument at that time?—They had.

544. What alteration has taken place on this point?—The alterations are particularized in those very rules that I gave you; they are open now to the senior proctors of a certain standing, and are particularly set out in those rules.

545. Do you practise as a proctor in any respect at present, or your son who is joined with you in the situation?—Only in extracting probates and administrations, we do, and in suits in the Consistorial court.

546. You are not registrar of that court?—No.

547. Then to a certain extent you are registrar, practitioner and taxing officer?—I am, to a certain extent.

548. To the full extent in two, and to a partial one in the third?—Yes.

549. Does [not that naturally afford you as a proctor in some instances, from your official situation, greater facilities for conducting your private business than that which is in the power of other proctors?—I will not pretend to say that it does not afford it; but unquestionably there is no difference made.

550. A case may arise of this description, by possibility, and perhaps has arisen, that where you were employed to extract originally, to take out probates or letters of administration in your capacity of proctor, that a caveat may be entered, and a suit may arise; in that particular instance you could not go on with that suit, or could you; should you think yourself justified, according to the practice?—I could not.

551. You would then, of course, hand over your business to some other person?—I would first hand the business to the party, at least, consult the party.

552. Mr. *Villiers Stuart*.] Would that be left to your own good feeling, or is it a rule?—It is the invariable rule of myself.

553. Were there not a registrar of the same good feeling as yourself, he might still conduct the cause?—No, I think it would be a violation of his oath; I am speaking

speaking now as to recommendations of proctors; in suits, I do not do that without the party asks my opinion or advice; I ask them first if they have any friend in the profession; I should not like to act a partial part towards any member of the profession.

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554. *Chairman.*] All I mean to infer is, that it is possible that a suit may arise in a case where you are professionally employed in the first instance, and are obliged to give up your professional practice to another proctor of the court, and that comes before you in the course of the proceeding in your public capacity; afterwards, the several proceedings, as registrar and deputy-registrar, come into your office; I simply mean to ask you, must not that case occur sometimes?—I never commenced a suit.

555. Where a proceeding may be commenced by yourself in your private capacity as a proctor, having resigned practice on account of contrary proceedings being taken, a caveat being entered, that that same suit comes into your office in your public capacity, under many charges and in a variety of ways, as a matter of course?—I do not think it properly applies, with great respect, to a suit or proceeding such as may be imagined; a will may get into my possession, or I may be applied to to extract an administration against which a caveat is entered; before any proceeding is taken, the caveat is known, and I relinquish it, and have nothing to do with it.

556. It does not follow, as a matter of course, that there is any corruption on either side; I only want the witness to understand that such a course has naturally a bad effect before the public, and with the parties proceeding in the court in this way, it is possible that in your capacity of deputy registrar you might have it in your power to give certain facilities to one party more than to another by early intelligence?—I think in any case I might have that power; I no doubt have.

557. All I want to ascertain from you, and I perceive I cannot ask it from any one more willing to give the information, is, will it not naturally leave an impression that that facility would be given to the person who first employed you professionally rather than to the opponent?—In point of effect, it may be so, it is possible; but in point of practice it is diametrically opposite, because I keep so perfectly aloof from any connexion with business of the kind.

558. Now I will only go one step farther; I am not imputing improper motives, I want now to ask you this additional question, do you not think that in case of a corrupt person being placed in your situation, that baneful and injurious facilities might be given to one party under such circumstances as I have now mentioned?—I think in a corrupt person it might apply in any case, and indeed he must be a very corrupt man who would go a greater length in that case than any other.

559. *Mr. Villiers Stuart.*] You mean where the registrar was acting as proctor as well?—In any case, whether he was or was not, he could give facilities to one party more than another, if he was a corrupt man.

560. *Chairman.*] Were those cost-books ever discovered that were lost prior to 1812?—No.

561. It would appear, that the practitioners in those courts furnished their books of costs, some of them, to the Commissioners of Inquiry; were you aware of that?—Not until after the publication of the Report.

562. There was a scale laid down of charges, by the judge, by an order of the court, that it was the duty of the deputy registrar to see attended to?—Yes.

563. Has that order been entered in the rule-book or otherwise in the registry?—Not more than appears at the head of the scale.

564. Has it been signed by the judge, to your knowledge?—No.

565. I believe it is the rule that the orders of the court in all other courts are signed by the judge?—I know of no rule to that effect.

566. It is the custom that all orders of the court shall be signed by the judge?—I know of no order-book until that one kept by me; I never knew of an order book except the rule-book, and the order-book which is now kept in which these rules are entered, of which you have got a copy to-day.

567. The rule which I stated has not been entered and signed by the judge to regulate the fees of the court?—That scale I did for a long time conceive was initiated by Dr. Duigenan, and also by Sir William Scott, the present Lord Stowell, but since my blindness I understood that Dr. Duigenan's initials are not on it; but the impression on my mind always was that he had initialed it, and I think it is so given in evidence by me.

568. There is a certain regulation recommended with regard to ingrossing, collating

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collating and entering the will contained in this printed scale, and I believe it is not found so set down in the charges that are allowed by the registrar; it differs?—The rate is set down, but the amount must vary according to the length of the will, and therefore it could not be set down in that.

569. Again, "The printed scale contains in the charges sanctioned by it some of the gratuities already mentioned as being paid to the deputy registrar, to wit 2s. on each probate and administration and 1s. and 2s. 8d. on each commission, thus transferring the payment of these gratuities from the proctor to the client and establishing them as a fixed charge;" this was thought to be a deviation from the rule already laid down and alluded to, which is not warranted by any order of the judge?—The 2s. on the probate or administration, and the 1s. on the commission were made when I got the office, and the 2s. 6d. got into that inadvertently, or by mistake, as described by me in evidence before the Commissioners, and it has been, since the discovery of it and the Report of the Commissioners, struck out and the charge discontinued.

570. It has also been stated, "that clerks' fees are also introduced into the same scale, and appear to be imposed by its authority, although it is not alleged by Mr. Hawkins, that the nature, the particulars, or the amount of the gratuities or clerk's fees were ever submitted to the consideration of the judge;" this is complained of as an irregularity?—I think I have deposed already, that the whole scale was submitted to the judge, and met with his approbation.

571. In your former evidence, I believe it is admitted that the particulars or the amount of the gratuities or clerks' fees were never submitted to the consideration of the judge, or at least not officially, did not receive his official sign manual or approbation?—The scale was submitted to him, and he approved of it; whether his attention was drawn to the several charges I cannot charge my memory with, but but I beg to refer to my evidence given at a time when my recollection was much better on the subject than it is at present.

572. The Commissioners state that they are incorporated and blended together in one aggregate sum, with the fees of the officers, and the proctors' charges, so as to afford no opportunity for the judge to distinguish between them, although it is asserted in general terms that the scale had the approbation of Dr. Daigman?—Indeed I would beg to refer to my former evidence on that subject; I have been so engaged with the charges contained against myself, personally, in this Report, that my recollection is not so much alive to that as it would appear it ought to be.

573. The last charge which the Commissioners draw attention to is this, "that whilst the scale is so framed as apparently to present the total amount of expense attendant upon extracting a probate or administration, given under each head in each case, the sum thereby presented as the entire charge is deficient by the amount of the fee for ingrossing, collating and entering, which is not included in it;" do you agree in that view?—I do not; I think it a very erroneous conclusion; it could not appear, in my judgment, more explicit; there is a blank left there for a certain charge, at a certain rate, the gross amount of which must vary according to the length of the will.

574. I would draw your attention to this, that that would be perfectly correct were it not that there is a sum total given at the bottom, and the whole apparently added together, and then it says, "Total charges for extracting," and so on; whereas there is a blank left in the main addition?—Yes, but very visible, in a very conspicuous place.

575. The only error, then, is in adding up, and apparently giving a sum total, whereas that sum total did not in reality give the whole charge?—In point of practice I am convinced that that is, in its present shape, more satisfactory to the public in general than it would have been had it not been totted up; for this reason, if a party applies to know how much are those costs, or how much, or nearly the amount of those costs, there you have it very nearly at one view.

576. Mr. Villiers Stuart.] It also has this effect, it prevents any additional charge being made?—Yes, I find in practice it is much more satisfactory to the public.

577. Chairman.] I only wish to have it understood that a sum total is given which in reality is not the sum total; is not that the case?—It is the case, undoubtedly; but the same error is in the Canterbury scale; if in error, it was done innocently.

578. It appears from this Report that the charges of the proctors which were sanctioned by the registrar in his capacity of taxing officer varied very much for performing

performing the same duty in extracting, and ingrossing, and entering; are you aware of that?—I am not aware at this moment what is alluded to. *John Hamilton, Esq.*

579. This Report says, "From the foregoing statement it will be perceived, that previously to the introduction of the system of charge established by the scale of 1812, the proctors' emoluments, on obtaining grants of probates and administrations were confined to the items denominated 'Act and Appearance,' 'Extracting,' and 'Ingrossing and Entering,' the former being in general charged 8s. 6d., although in some instances it appears in the proctors' books at 11s. 4½d., and in others at 12s. 10d.; there are three different charges, therefore, for the same duty, according to the proctors that performed them;" can you explain how these different charges happen to be allowed by your office in your capacity as taxing officer for the same duty?—I am certain they were never allowed the different sums; there was a fixed sum allowed.

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580. I have already read to you that the manner in which the Commissioners arrived at that information was from the proctors' own books of charges?—It does not follow that the registrar taxed them although they made them; and those bills were very rarely taxed.

581. Then the charge for extracting appears to have been made in some degree with reference to the amount of the assets, and in general varying from 13s. 4d. to 2l. 13s. 4d., but sometimes extending to 5l. 8s. 4d.; did any of these different charges for the same duty ever come into your office, or were any of them ever allowed in your office?—Yes, I think they were.

582. How can you account for the difference?—I think that fee was regulated by the amount of assets, and I am sure there was a scale, or some principle then in practice, which regulated it.

583. Is there a scale now laid down for that purpose?—There is in the printed scale of 1812.

584. It would appear that it was the custom for different proctors in their different offices to make charges of a very arbitrary nature under these heads according to the amount of assets; when these charges came before you did you feel yourself bound to reduce their charges to any fixed standard?—Certainly.

585. Then you account for these differences principally from the inattention to the taxation in court?—Not inattention to taxation, but inattention of the proctors in drawing out the bills.

586. The great variation, I suppose, arises from the inattention of parties in bringing their costs to be taxed; am I to understand it so?—If the parties brought their cost to be taxed, they would be regulated according to the fixed rule.

587. That is now adopted?—Yes.

588. Is there a fixed scale for charges now, in taking out administration or probate, or extracting?—There is.

589. Have you brought that scale with you?—I have it in London; it is not with me at present.

590. Will you bring it with you to-morrow?—Certainly.

591. Mr. West.] You said, in answer to the Chairman, that as a proctor, there was some portion of business that you did; that you acted as proctor in making extracts of probates?—Of probates and administrations.

592. Could you give us any thing like an idea of the amount of your practice for the year, upon that particular branch of your profession?—As to profits?

593. Yes; I want to get an idea of the extent of it?—I should imagine it is worth 1,200 l. a year to me.

594. The extracts from probates?—Yes; from 1,000 l. to 1,200 l. a year; that is mere guess; it may be something more or something less.

595. With respect to the other branches of your profession, could you give us any general idea; in the same way as registrar; is that by salary?—No, it is not; it is by a proportion of the fees, perhaps from 1,000 l. to 1,200 l. a year.

596. That is pretty much about the same?—Yes; it is about the same.

597. Have you been always in possession of that practice since you were appointed registrar?—Yes.

598. How long was that?—Thirty-six years; in 1801 I was appointed; I would not have taken the office of deputy registrar if I had not had an understanding with the then judge, Dr. Duigenan, that I was to have the privilege to extract; I recollect the conversation with him perfectly.

Jouis, 18^e die Maii, 1837.

MEMBERS PRESENT.

Mr. Hamilton.
Mr. Villiers Stuart.

Mr. Lucas.
Mr. Sergeant Jackson.

MR. WINSTON BARRON IN THE CHAIR.

John Hawkins, Esq. called in; and further Examined.

John Hawkins, Esq. 599. *Chairman.*] HAVE you brought with you that paper which you were
18 May 1837. requested to bring yesterday?—I have.
600. Will you hand it in?—Ye.

[*The Witness handed in a Scale of Fees.*]

601. Has this scale of fees been approved of by the judge of the Prerogative Court?—It has.

602. When was it approved, and how long since?—In 1812.

603. Has there been no alteration since then?—None, save that trifling alteration respecting the gratuity on commissions, which was struck out when discovered, which I mentioned yesterday.

604. The charges of the proctors, by this scale, appear to be according to the value of the property which is sworn to under the administration?—They do.

605. Although it should be the same duty that would be performed in case of the property being small or large?—Exactly so.

606. This is the same scale, I believe, that is mentioned in the Report of the Commissioners, in the 19th Report?—I have no doubt it is.

607. And which they have recommended to have altered?—I think so.

608. Are there any other papers connected with that inquiry, that you think it necessary on your part to hand in to the Committee?—There are.

609. What are there?—There is a certificate of the proctors, which, perhaps, I ought to have handed in yesterday when interrogated on one point, as to my throwing impediments in the way of their business; this is a certificate signed by all the profession, I believe, but Mr. Swift, whose evidence is in the Report, and Mr. Rogers, sen., who was not asked upon it.

610. Is Mr. Rogers practising now?—He is not in practice now.

611. He has retired for some years, I believe, from the profession?—He has discontinued; he does not attend.

612. *Mr. Lucas.*] Is he the gentleman that was concerned in conducting a case some years ago, in which the costs were very extraordinary, 1,500*l.* or 1,600*l.*?—Yes; it is the same gentleman.

613. *Chairman.*] Is Mr. Swift still a practitioner in the court?—He is; and if necessary, I can prove to you that Mr. Swift was about to put his name to that certificate, notwithstanding the evidence he gave, if necessary.

614. What prevented him?—The interference of one of the proctors, stating that it was inconsistent, and at once contrary to the evidence he gave; if necessary, I can prove it by a person present; I feel this the more necessary, in consequence of the way in which I, as an individual, have been spoken of in that Report.

615. Will you hand in that certificate?—Yes; [*The Witness handed in the Certificate*] there is another document which I should be desirous of giving in, if the Committee permit.

616. Mention the nature of it?—It is an affidavit of Mr. Cunningham, who is stated in Mr. Swift's evidence to have given the information; the ground of that evidence upon which the Commissioners have reported.

617. The affidavit of Cunningham himself?—Yes.

618. Submit the affidavit, and we shall see whether it is a document that ought to be put in?—Yes.

619. Is Mr. Cunningham still employed in your office?—He is.

620. I perceive in the explanatory statement signed by the proctors concerning your duties, in the Report of the Commissioners, in page 13, it states, "In the
case

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case of all other proctors, if the judge should not be at home, or be otherwise engaged, the article must be brought back to the office, and the caveat will be received, and take effect; but in Mr. Hawkins's case the article is not brought back, and the clerks have orders to tell a falsehood to the public, and to refuse receiving that very caveat, of which the law appoints Mr. Hawkins to be the official guardian; that is the way they put the statement of the Commissioners, and they contradict that?—Yes.

621. Without imputing to you the possibility of ever having done so, I will simply ask you, would it not be possible, were there a person of corrupt practice in your situation, to take that advantage of the opposing suitor in a case of this description?—As I mentioned yesterday, if a corrupt person be in office he can certainly do parties a great deal of injury, but such a practice as that given never was thought of.

622. You recollect perfectly what I say; I feel this is no personal inquiry at all; I am anxious even that your own views and statements should go to your own justification in the fullest extent; but I am here now, if possible, to prevent even a corrupt officer in future from mixing up two different offices that may be an injury to the public; and feeling you have answered me candidly on that point, I think it is of great consequence that you admit the possibility of such a thing being done?—Precisely so; with great respect I would mention this, as one great cause of complaint that I feel personally regarding that point; Mr. Swift was examined on that point, and he deposed as having received his information from Mr. Cunningham; Mr. Cunningham was before the Commissioners afterwards, and was never asked the question; thus I say that they reported on secondary evidence when the primary was within their reach; and he contradicts him in the affidavit.

623. My object is not to inculcate you or any other man in this inquiry; my object is to place the court for the future on such a footing that it will not, so far as human ingenuity can place it, be subject to these abuses, and, referring to page 14 of your justification, I ask you, "In a case where there can be no doubt of the judge signing that fiat, the registrar can at once issue a commission for himself; I cannot state any instance in which this has happened, but it might happen." Now, I again ask you, does not the mixing up of the two offices, or, rather, the three offices, which you hold, necessarily, give the corrupt facility?—It gives the power, but it never was done.

624. Then, again, there is another facility which is given to you in your double capacity referred to in your justification, page 15; it says, "The registrar can swear his own clients, and seal their grants at any hour; but for the other proctors he will swear and seal only at a particular hour." I will ask you does it not give that facility also?—Not at present.

625. It did give it, but not at present?—It did, but it never was practised.

626. Mr. Lucas.] Did it give it at the time of the Commissioners' Report?—No; in the time of Dr. Dargan; I did so frequently when he was attending Parliament, and otherwise absent from Dublin.

627. Chairman.] But, as registrar, you can seal whenever you please?—No, for the judge holds the seal.

628. Under the present practice?—Yes.

629. Mr. Lucas.] Since when?—He always holds the seal; I only held the seal when he was absent; I had a commission from him to swear and do the general business, all, in fact, but court business.

630. Chairman.] Are you aware whether those regulations that were suggested by the Commissioners, and which were read to you yesterday by me, could be carried into effect without the assistance of an Act of Parliament or some legislative measure?—My opinion is, from general observation, that they could not.

631. And that is, perhaps, the reason why they have not been, some of them at least, carried into effect?—I believe Dr. Radcliffe feels that he has no right to interfere with what he conceives are vested rights.

632. Have you any other suggestion, or any thing you wish to state, in consequence of that part of the Report?—There are.

633. We are ready to hear them?—In the first place, I believe the statement refers to a charge, wherein I am stated to have raised the clerks' fees and reduced their salaries, to benefit myself. I should wish to be interrogated as to that.

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634. Since you came into office, have the fees of the clerks in your office been increased?—By the scale 1812 a small increase may have taken place.

635. Was it consequent upon that increase that you reduced the salaries of the clerks then in your office?—I never reduced the salary of any clerk in the office there was a reduction on new clerks, which did not take place till 1825, 13 years after that scale was framed.

636. There was a clerk in your office, a head clerk?—Yes.

637. What was his name?—Mr. Haggarty.

638. How long did he continue in your office after the scale of 1812 was laid down?—Eight years; in 1820 he died; his salary was continued till then.

639. Did his salary continue the same till his death?—His salary was increased 60*l.*; it was not increased from 1812; it was 160*l.* a year up to his death; it never was reduced.

640. At his death that class of clerk was entirely abolished in your office?—It was; I took upon myself the labours of the office, which I think caused my blindness.

641. Did you take an additional clerk of the ordinary description to assist you?—I did.

642. And his salary was fixed at what sum?—Twenty-four pounds a year.

643. Is there any thing else you wish to state?—There is a charge of creating new fees or new services; it is a very trifling thing.

644. What was the annual average amount of the new fees created by you for the clerks?—To each of the clerks 1*s.* 4*d.* per annum; it only produced that for three years. I caused a search to be made last week and they only produced 1*s.* 4*d.* to each clerk per annum, and I stated in my evidence that the service was of rare occurrence on which the Commissioners——

645. *Mr. Lucas.*] What was the object of creating those new fees?—For the new services that were introduced, one by the Stamp Act and another on the order of Dr. Radcliffe, the judge.

646. The fees you created were for new services?—Yes.

647. *Chairman.*] Have you any knowledge of the working of the local or minor courts, called diocesan courts?—Why, I cannot say I have a knowledge of them; I have heard a good deal of them, I cannot say I have a direct knowledge.

648. Have you sufficient knowledge to be able to state whether they are regularly conducted on one system, or not, in the different dioceses in Ireland?—I think I have sufficient to say they are not.

649. Are you aware whether the practitioners in these courts are men of sufficient experience in matters of law, or not, to conduct the business in a manner satisfactory to the public, on the average?—I should rather think not, from the proceedings that I have known come from these courts from time to time by appeal.

650. Are you aware whether the men appointed to be judges in these courts are sometimes men totally unlearned in the law?—That I could not take upon myself to say.

651. Are not necessarily learned in the law from their station in life?—I should think so.

652. In fact, that they are sometimes clergymen?—Certainly.

653. Who have not been brought up to any intimate knowledge of legal matters?—I certainly think so.

654. Would you think it possible, from your general knowledge and experience of your own court, to have the business of these diocesan courts concentrated in one court in Dublin under some alterations in the courts, necessary on such a great addition of business?—I would say that it would tend to establish a regular practice throughout the country, and if it could be done without local inconvenience to persons resident in distant parts of the country, it might be advantageous.

655. You have frequent appeals from these courts to your court?—None; our court is not a court of appeal, it is an original court; all causes originate there.

656. Where do the appeals lie from the diocesan courts?—If it is a diocesan court, first to the Archdiocese and then to the Court of Delegates.

657. Have you any general knowledge of the Court of Delegates?—I have had a great deal of practice in that court.

658. Do you practise in it now?—No, not latterly.

659. Is

659. Is their decision final?—No, it may go afterwards to the King in council by a commission of review; I think this very proceeding is set out in my evidence.

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660. Then, according to your statement, a litigious person may commence a suit in the diocesan courts, proceed by appeal to the Archdiocese Court, proceed from thence to the Court of Delegates, and then to a commission of review, which gives a very great power, I should suppose, to men having money and being litigiously inclined, to prolong vexatiously actions in these courts?—No doubt of it at all.

661. To the ruin of parties sometimes seeking justice?—No doubt of it at all.

662. Who is the chief judge of the Court of Delegates?—The judges take it in rotation, the judges of the law courts and the masters in Chancery.

663. Singly or jointly do they act?—There must be two for an interlocutory order and three for a final sentence.

664. Are you aware of an Act of Parliament having passed lately, entitled, "Mr. Lynch's Bill concerning Quarter Sessions," which has taken from the diocesan courts a portion of the business which they transact respecting wills?—I have heard of that bill, but I was not aware that it interfered with any of the diocesan courts till now.

665. In cases of legacies not exceeding 20*l.*?—Yes; I may have heard something of it, not sufficient to say any thing on the subject.

666. Would it not give one facility to have those diocesan courts transferred to Dublin, to one focus, that of having all wills found in one place for professional persons to resort to, in case of suits of various kinds in the different courts; at present, if I understand rightly, the practice is, that certain wills are deposited in these diocesan courts in the country; would it not be advantageous to the public in one point of view, to have all those different wills deposited in one place for general resort and safety?—I think it might, under proper regulations, as I said before; it might be right to have some way of giving local information to distant parts of the country, to persons desirous of seeing them; for those wills are generally those of the poor persons, and it might be an inconvenience for persons interested in a case of that kind to send a great distance to get the information required; but, under certain regulations, I am fully persuaded that great benefit would result as to practice.

667. And safety?—And safety, certainly.

668. Are you aware that some of these country depositories are of a very irregular, and I may say, transitory description, depending on the residence of the local registrar?—Yes; and I have heard that their records are very insecure in many places.

669. Have you ever known or heard that they have been lost or mislaid in some particular districts?—I cannot say I have.

670. Are you aware whether any of these local or diocesan courts have what is called peculiar jurisdiction in this country; that your jurisdiction differs in one diocese from what it is in other dioceses?—I am not.

671. Mr. Lucas.] Is it not the case that persons of wealth and station usually have a solicitor or man of business in Dublin, for the conduct of their business, in whose hands the drawing of their will would generally be?—I should think so.

672. Is it not the case that poor persons residing in the country, rarely or ever employ a solicitor at Dublin?—That I also believe.

673. Would it, or not, in your opinion, be an inconvenience and expense to poor persons to be obliged to have reference to a central court in Dublin for the purpose of examining wills?—That is exactly the principle I alluded to before; I think, as regards inspection of wills, it might be a great inconvenience to that class of persons, and an expense.

674. My question had not reference to the expense of the fee, but to the expense of employing persons at a distance and travelling expenses, that would occasionally, of necessity, occur?—Yes, a professional person would charge, exclusive of the office fees.

675. Would not a distance from many parts of the country increase the expense in many instances to the poor?—I think it might.

676. *Chairman.*] Generally speaking, the party must employ an attorney to make these inquiries in the country, you would suppose?—I should think not; he could go direct to the office himself; it is not necessary to employ an attorney merely to inspect the will to know its purport.

Q.72.

§ 3

677. Mr.

John Hawkins, Esq.

18 May 1837.

677. Mr. Lucas.] Is it within your knowledge that many persons not professional come to your office to examine wills or not?—It is.

678. Many persons who are not professional?—Yes.

679. To save professional fees?—I have no doubt of it.

680. Chairman.] The public have a general right to inspect wills on payment of certain fees at your office?—Yes.

681. Mr. Lucas.] The fee is not of a large amount?—No.

682. What is it?—Half-a-crown.

683. What would a professional person charge for doing that by deputy, which in the case you speak of the principal does for himself?—I believe he would be taxed 6s. 8d. for his attendance, at all events, besides the search.

684. If he made extracts would he charge additional for those extracts?—I should think so; I do not know what the attornies have been in the habit of charging, but they would charge 6s. 8d. for attending to make the search, because they are taxed it.

685. Attornies in making the search would naturally charge fees for any duty they perform for their clients at your office?—I should think so.

686. Some of those duties the principal might, though a poor person, occasionally perform for himself?—Yes.

687. And of course would be subjected to no fees?—Of course not.

688. Chairman.] Are you aware that there is a charge been made in page 41 of the Commissioners' Report against you of sanctioning the proctors in a double charge for the same duty in one particular instance?—I am.

689. How do you explain that to the Committee?—I say that no such charge was ever passed over by me, or allowed.

690. Did that bill of costs come before you to be taxed in that case?—Not as a public officer; an application was made to our judge to have the bill referred for taxation, and he refused it, inasmuch as he had no power, although Mr. Fenner swears that he made an order on the subject. The judge was inhibited by the Court of Delegates, and that inhibition still exists.

691. And how came Mr. Fenner to state that it was taxed?—It came before me as an arbitrator.

692. With the consent of parties?—Of course, I could not do it otherwise, and I am positive that no such charge as that imputed to me, namely, allowing double attendance, was ever allowed.

693. Have you any other explanation to make?—In the Commissioners' Report it is insinuated that I absented myself improperly from attendance on them; the truth is, I was in a state of very great debility and seized with sudden blindness, and was obliged to go to London, where I remained for several weeks under the care of a medical gentleman.

Martis, 24^{te} die Maii, 1837.

MEMBERS PRESENT.

Mr. Lucas.
Mr. Young.

Mr. Hamilton.
Mr. Villiers Stuart.

MR. WINSTON BARRON IN THE CHAIR.

John Matthew Galsworthy, Esq., called in; and Examined.

J. M. Galsworthy, Esq.

24 May 1837.

694. Chairman.] YOU were a Member of the House of Commons some years ago?—I was.

695. Had you ever any business as a salitor in the Prerogative Court in Ireland?—I had.

696. Is it long since?—My suit there commenced in the year 1826 and ended in the year 1830.

697. It

J. M. Gaiway, Esq.

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697. It continued, then, about four years?—It continued about four years.

698. What was the principal point in dispute between you and the other party?—My brother-in-law was taken ill at Ryland's Hotel, and he mentioned to a lawyer that he intended making his will; the lawyer took the heads of the will; but no will was drawn or read or signed by my brother-in-law.

699. The point in dispute, then, was, whether there was or was not a will?—Whether that will was or was not a will.

700. The point in dispute, then, was a very narrow point?—A very narrow point indeed.

701. And that point remained in dispute in this court during four years?—Nearly four years, as well as I can recollect.

702. Were there very heavy expenses attending the decision of this point?—The bill of costs that was furnished me was 545*l.* 18*s.* 3*d.* Irish, and my opponent's costs, I understood, were near 800*l.*

703. Do those costs include your own personal expenses?—O, certainly not.

704. Had you frequent occasion to attend the court in Dublin from your place of residence in the country?—I believe I had to go between 14 and 16 times to Dublin about that simple question, as I call it.

705. Then, besides your costs, there were other heavy expenses?—Very heavy expenses; I used to be often kept three weeks at Gresham's Hotel in Dublin, waiting upon this court, which, as well as I recollect, only assembled every Tuesday and every Saturday.

706. Were there any Commissioners employed in investigating the facts connected with this litigation?—There were, and they came down to the city of Waterford at considerable expense; I understood they had three guineas a day each, and I really do not know what the Commissioners came to Waterford about, what they could do about the business, but there was a commission, and it appeared to me to be the most useless expense I ever knew of.

707. This commission entailed considerable additional expense and delay, I suppose?—Very heavy expense and delay.

708. Have you any recollection of how long these Commissioners sat in Waterford?—O, they sat 11 days.

709. Does it state in the bill of costs what the Commissioners were paid per day, or for their whole charge?—I believe the commission must have been charged to the other party, as I did not solicit the commission.

710. Then how much did your proctor charge per day for his attendance on that commission?—My proctor charged for attendance upon that commission 54*l.* 12*s.*, and for his expenses coming to Waterford 18*l.* 4*s.*

711. How much per day?—Four guineas per day.

712. Does the proctor charge at the rate of so many miles for his allowance in travelling?—No, he charges four guineas per day for travelling; and he charges for attending on the commission four guineas per day; he charges 18*l.* 4*s.* for four days' travelling, and 54*l.* 12*s.* for 12 days' attendance, at four guineas a day.

713. How much does he charge for his travelling expenses?—Eighteen pounds four shillings.

714. For how many days is that?—Four days.

715. How much time do you generally take in going from Dublin to Waterford?—Twelve hours.

716. For which the proctor charges as if he were out 48 hours?—Yes.

717. And he charges the very same for those four days as he does for the days of attendance upon the commission?—Yes.

718. Therefore that is two days, if I understand his charge, for going, and two days for returning?—Just so.

719. The day-coach from Dublin to Waterford takes about 13 or 14 hours?—I believe about that.

720. It is done in one day, in fact?—Done in one day.

721. The mail takes one night?—One night.

722. During the progress of this suit were there frequent adjournments of the court when you attended in Dublin?—I found them most tiresome adjournments; there were several adjournments.

723. Did this necessarily increase your expenses of the proceedings?—O yes, very considerably.

724. Were there any frivolous or vexatious obstructions or objections made to you

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your claim by the opposing party?—I conceive there were a great many ridiculous and useless ones.

725. Could you give an instance to the Committee of one of those obstructions that appeared to you to be frivolous and vexatious?—They wanted to make out, in the first instance, that my wife, Mrs. Galway, was illegitimate.

726. She was the person through whom you claimed, it would appear, the property in dispute?—Yes.

727. And the opposing party threw a difficulty in your way, by wanting you to do what?—By wanting me to prove the legitimacy of my wife.

728. Was it this that led to the commission in the country?—O no; not at all; that was merely to gain time.

729. Did this objection about the illegitimacy of your wife cause any considerable delay to the suit?—As well as I recollect, it caused some delay, and put me to the annoyance and expense of disproving what they pretended to prove.

730. The party on the opposite side was the brother of your wife?—He was.

731. The real party opposing your claim was your brother-in-law?—My brother-in-law.

732. And he was the party who tried to make out his own sister illegitimate?—He was.

733. You were married several years previous to this?—O yes.

734. Was the legitimacy of your wife ever, to your knowledge, either publicly or privately objected to previous to this time?—Never.

735. Do you suppose, then, it was merely a frivolous and vexatious proceeding, in order to cause delay?—Entirely; wholly and solely on that account.

736. Was that left to the decision of a jury in the end, whether your wife was or was not legitimate?—No.

737. It was then, I suppose, decided by the examination of various witnesses?—They put in the objection, as well as I recollect, to gain time, and to annoy me in the progress of the suit, and they abandoned it afterwards.

738. Was there any case brought before a jury in this particular instance?—None at all.

739. You have been concerned in other law-suits in other courts?—I have.

740. Is it your opinion, from your experience in these matters as a man of business, that a matter of this kind in one of the other courts would or would not be decided in the course of about as many months as this took years to decide in this court under the same circumstances, the point at issue being what you have already stated?—I have heard there is a great deal of delay in the Court of Chancery and the Court of Exchequer, but it strikes me that this matter at issue, or the matter I was concerned in, ought to have been decided within a year, at all events.

741. You have had a good deal of experience in law matters?—I have.

742. Frequently contests on various matters of property in the different courts?—I have had some; I have had a good deal of law business one way or another.

743. When these Commissioners who went into the country to examine witnesses took up 11 days, what was the main point to be ascertained, could you inform the Committee?—Why, I understood they wanted to make out that my brother-in-law who died was more attached to the family of the gentlemen who instituted the suit against me, that is, to my opponent's family, than to my family.

744. Did it ever strike you that that matter which took up 11 days in examining witnesses, might in a common court of law, from your experience, have been decided by and on evidence before a jury in six or eight hours?—I should say certainly, if it came as a record to be tried before a judge and jury, it might be decided in six or eight hours.

745. And considering all the expenses that you have enumerated, and the expenses of the other parties, and from your experience, do you think it would be more or less expensive to have it so decided, according to the system of the common law courts?—I think it would be a considerable saving to have it decided by a common record before a judge and jury.

746. Have you ever been informed, or have you any knowledge of what the expense of the opposing party in this suit was?—I was told it was between 700 £ and 800 £.

747. And do you believe it was?—I believe it was.

748. Could

748. Could you make a rough calculation of what your own personal expenses might have been, independent of the bill of costs?—I am certain at least 500*l*.

749. Then, according to that calculation, the expenses of this suit of the two parties, to the best of your knowledge, would be between 1,700*l*. and 1,800*l*. for the decision of that simple question; it would be about that?—At least 1,700*l*.; a thing that might have been decided in a day, if it were tried by a judge and jury.

750. Have you had any opportunities of hearing complaints from any other parties concerned in this court as to the delays and expenses of the Prerogative Court?—Repeatedly; I have heard complaints against the Prerogative Court and the Court of Admiralty.

751. For delays?—For the delays and the enormous and useless expenses.

752. Mr. Young.] Then the expense, you say, was something under or about 2,000*l*, because you have not added the expense the other parties may have been at in coming to town?—No, I do not know their expenses.

753. Have you any objection to state what the value of the property in dispute was?—The value of the property in dispute was near 300*l*. a year; about 300*l*. a year.

754. Then a memorandum merely having been taken, and no will having been written, the object of the opposite party was to prevent your appearing as heir-at-law in right of your wife?—Yes, it was chattel property.

755. And your wife would have appeared as joint heiress-at-law?—Yes.

756. And the object was to prevent her getting the property?—To prevent her getting the property.

757. It was necessary to prove her illegitimacy in order to do that?—Yes; and they set up this extraordinary plea merely to put me on the proof of when she was born, and all that kind of thing, and to gain time; they wanted to make out that that was a will.

758. Chairman.] The opposing party wanted to make out that this instruction to a barrister was to be considered a will?—Yes.

759. Mr. Young.] And then, it having been decided that it was not a will, they wished to prevent your wife from appearing as joint heiress?—It was in the course of the proceeding that they wanted that; they abandoned it when their object was gained; they seemed to have delayed the suit as long as they possibly could, whatever their reason was for it; my brother-in-law owed me a great deal of money, and they wanted to force me into terms to comply with theirs, and their object was to cause every kind of delay whatever, which the court sanctioned.

760. And they were at personal enmity with you, at least not friends?—Not friends.

761. So that they resorted to every device which the law put in their power?—Yes, to cause delay and to give me annoyance.

762. Both on account of personal enmity, and, I suppose, pecuniary interest?—Both; but it appeared to me an extraordinary thing that such a simple matter as this should last four years; that the deciding whether this instruction for a will (the will not drawn) was a will or no will should last four years, and this enormous expense incurred.

763. Chairman.] Was the will established or rejected by the court?—It was rejected; it was decreed by the judge ultimately that the will was null, void and invalid in law.

764. Mr. Young.] And you do not know whether there was any decision about the costs, but each party paid their own?—Each party paid their own; I paid my costs, and I suppose the opposing party paid theirs.

Veneris, 26^a die Maii, 1837.

MEMBERS PRESENT.

Mr. Hamilton.
Mr. V. Stuart.

Mr. Lucas.
Mr. O'Connell.

MR. WINSTON BARRON IN THE CHAIR.

Joseph Stock, Esq., called in; and Examined.

765. WHAT are you by profession?—A barrister practising at the Irish bar, and an advocate in the Ecclesiastical Courts in Ireland.

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766. And

26 May 1837.

Joseph Stock, Esq.

26 May 1837.

766. And I believe a doctor also?—Yes, practising in the civil law courts and the Admiralty Court.

767. How many years have you been practising in the Prerogative and Ecclesiastical Courts of Dublin?—Since the year 1817; I think 1816 or 1817.

768. And you have a brother who is a proctor there?—Yes, a proctor in the Prerogative and other Diocesan Courts; he is a proctor in the Prerogative Court, and practises in all the other Ecclesiastical Courts, *virtute officii*.

769. You have had considerable experience, I believe, in these courts?—I have had a good deal of practice in them; I have constantly practised in them since I first knew them.

770. Will you be pleased to give a short idea to the Committee of what the processes are?—Suits are instituted in the Prerogative Court by various forms of citation; a citation answers to a writ in the common law courts.

771. Under this head could you suggest any improvements?—No, I do not think that any improvement could be introduced in the system of process in the Ecclesiastical Courts. I think the system of process is remarkably brief and effective, and serves all the ends that can be desired; and, by long practice, has been reduced to a system which is perfectly well understood and perfectly efficient. I should observe, that the forms of citation in general are briefer than the English forms, and I think more pertinent.

772. Now as to the present system of pleading, perhaps you can give information to the Committee that might lead to a more effectual, or less expensive, and equally effectual system?—In the Court of Prerogative in Ireland, improvements and reforms have been introduced by the present judge, which have removed some imperfections justly attributable to the system before, I think. According to the subsisting practice no party has a right to plead in a cause more than twice; the first plea in a testamentary cause is called the primary allegations or *coeditit*.

773. Have you directed your attention to any improvements that might be made in the present system?—In order to arrive at a clear understanding of the subject, it is necessary to state the actual system very briefly; these primary allegations are exceedingly short, and merely explain the grounds in fact and law that are absolutely necessary for sustaining the right of the party; then the real and effective pleading is the additional allegation; formerly the parties had a right to plead more than once; they put in a farther additional allegation, but that privilege has been retrenched by the recent reforms in the court, and now no party can plead more than one additional allegation; these additional allegations serve the purpose of stating all the facts and documents that compose the body of evidence in the cause on each side; it being the fundamental principle of the court, that every fact should be put forward first in plea, and afterwards in evidence. It may perhaps be proper just to make this remark in passing, that, besides the allegations, exceptions may be put in, such as exceptions to testimony, and exceptions of various kinds, but which in practice rarely occur at present, and, when they do occur, are subject to the strictest control of the court, and really never promote any other than beneficial purposes according to the present system, as long as that system continues.

774. Mr. Villiers Stuart.] Does that depend on the judge?—Each party against whom any such pleading is filed, or who is interested against it, has a right to object to its reception; the court determines then whether it is proper to receive it or reject it; but the great mischief complained of being delay in the process of that court, it appears desirable to abridge as much as possible this latitude of pleading in every case, as much as is consistent with attaining the due ends of justice. I was merely remarking (from my practical knowledge of the court, which has been within the presidency of the present judge, who is an extremely competent and able man as a lawyer), that the system of prolixity of pleading has been put an end to, I should say, altogether, or as far as possible, consistently with the system of the court. Now the great difficulty I feel it right honestly at once to put forward to the Committee, observing, at the same time, that whatever I state I state with extreme diffidence, for it would require a peculiar study, and in fact the same diligence and application that a man would give to writing a treatise on the subject, in order to permit himself to give an opinion on the effect of any theoretical change whatever. But however, with that qualification, I should say the question, and a serious question for the Committee is, how far the system of pleading must be altered, if that great change is introduced of proceeding by an examination of witnesses *vivâ voce* in place of examination *in scriptis*. If that change

change is introduced, it may be very expedient also to introduce corresponding changes in the system of pleading.

775. That would naturally follow?—That would naturally follow; because certainly a specific detail of facts in a plea, preparatory to a trial, by the open examination of witnesses, would be superfluous.

776. *Chairman.*] Then the tendency of your experience in these courts would be, if I understand you rightly, to recommend a *vide voce* examination in most instances?—I am inclined to think, from the general results of my experience, that public opinion would be much more satisfied, and the wishes of suitors better consulted, if it were found practicable to reconcile the system of *vide voce* examination with the fundamental principles of the court, and I do not see any impossibility in that. I should beg leave to state as my reason for that, that the judge of the Prerogative Court has abundant leisure, and consequently you have a fund of time applicable to public purposes which is not now employed. Secondly, I do think that in Ireland the genius of the people lead them generally to desire a system of public examination; I should say, perhaps, in every part of the British dominions the same, but I think it is rather peculiarly the case in Ireland; I think there is a wish and an anxiety, on the part of suitors, for the public at large to be present at all judicial proceedings, to oversee the proceedings; and I have constantly found in my own personal experience, that my clients have been disappointed when they first came to understand that they were not to have their cases brought to speedy issue by an open examination of their witnesses. For these reasons, and others, I certainly am disposed to subscribe to an opinion which I know is not generally entertained by the members of the profession or by the most experienced advocates in England, decidedly not, nor by the judge of the Court of Prerogative, Dr. Radcliffe; but I am disposed to think, and it is the result of my own conviction, that a system of *vide voce* examination would be an improvement in the mode of administering justice in these courts.

777. With regard to *vide voce* examination, there will be at least one result attained, namely, that of the power of cross-examination?—Of efficient cross-examination; there would be a double advantage obtained, obviously, in the mode of conducting examinations; first, in the direct examination; because, in putting the questions in a *vide voce* examination, the examiner is in immediate contact with the mind of the examinee, the witness; one question generates another, and this progression produces two advantages; first, that the examiner sees his way to the end he has in view, and, secondly, that a vast deal of irrelevant matters are necessarily removed; because persons blindly examining in writing must put a great number of questions as matter of precaution.

778. *Mr. Villiers Stuart.*] At the present time the judge does not read the whole of the depositions, I believe?—No, he does not; if he chooses he may call for them, and read them for his own satisfaction; but the practice is, for the advocates to select such parts of the evidence as they think proper and necessary to be read; these depositions are read, and the judge in the Prerogative Court in Ireland never thinks of going beyond what is submitted to him by the counsel; but that embraces a very large proportion. There is a great mischief arises in this way from the present system; I have already stated, that the witnesses are examined upon pleas specifying the facts of the case, and the object of the proctor is, and ought to be, to produce a sufficient number of witnesses to prove each fact, and not more than is necessary; but it so happens, that a witness produced to prove a fact pleaded in any given article of an allegation, most probably knows a great number of other circumstances contained in other articles of the same plea; and the proctor invariably produces and examines him to every article upon which he can give any information whatever, the consequence of which is, that five, six or seven witnesses more than is necessary are very often produced as to a great number of specific allegations of fact, some of which might be dispensed with under a *vide voce* examination; they would in every case, because, under a system of *vide voce* examination, the moment a fact is proved—which with respect to most facts will be done by two witnesses, if not one—the moment it is disposed of, there will be an end of that part of the examination, and that would abridge, to an incalculable extent, the amount of evidence.

779. *Mr. Lacey.*] The proctor appears, then, to draw from every witness every
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thing whatever he knows on the subject while under a *vide voce* examination; the barrister would take only that information which was necessary to the case?—Which was *essentially* necessary to the case; and that I think one of the main advantages of the substitution of system; you observe the mischief resulting from the superfluity of proof is, the increasing the bulk of the brief at the hearing.

780. *Chairman.*] Has the proctor a direct personal interest in producing this mass of evidence before the court?—The consequence of the multiplication of depositions is, that the profits of the proctor are undoubtedly increased in different ways, especially by the size of his brief, for which he is entitled to charge certain fees; but I must state this at the same time, in justification of, and proper protection and vindication of the character of proctors; it is a very nice question with them, and in general it is a due exercise of their discretion to take care that no fact is left unproved that could by any possibility be proved.

781. I am not attributing any corrupt motive, I am only wishing the witness to state the facts?—There is no question that that is perfectly right.

782. That the persons who have the power of prolonging the examination have a direct profit in those examinations being prolonged?—Unquestionably the greater the bulk of depositions the larger the profits of the proctor at the hearing of the cause.

783. And when there is a commission the Commissioners also have another source of direct interest in the prolongation of the evidence likewise?—Undoubtedly, he charges so much per day.

784. Therefore the court that is examining, if I may call it a court, that is, the Commissioners and the proctors on both sides, are themselves interested in having those examinations prolonged?—They profit in consequence; though I am perfectly certain that such a consideration never practically enters into the contemplation of either the examiner or the proctors.

785. *Mr. Lucas.*] In your evidence now, are you speaking of evidence taken in the country only by proctors, or evidence taken in the country and Dublin both?—In both. Precisely the same considerations apply to both; and, in fact, I should add, that there would be the same reason of interest in both cases; because the examiner and the proctor have the same profits arising from the unnecessary multiplication of proofs; but, I repeat, I am perfectly convinced the profession are pure from any intention or systematic pursuit of interest in any such way.

786. These inquiries by proctors into evidence are preparatory, are they not, to an adjudication of the cause of question before the court?—Unquestionably; and allow me to observe upon that question, that a good deal of what is complained of as delay in the early and preliminary stages of the proceedings of a suit in the Prerogative Court arises from the necessity of making extensive and accurate inquiries as to the facts of the case—the informations in the case—because the rule there being to plead first and prove afterwards, all necessary information must be got together, and the whole case must be instructed with evidence before the plea is put in.

787. Then allow me to put another question, inasmuch as a witness so examined by a proctor, preparatory to adjudication, when parted with, will be expensive to get at again, is it not the duty of the proctor, for the sake of his client as well as his own pecuniary interest, to extract from that witness all the information he possibly can have on the subject?—Do you mean in his private communication with the witness preparatory to his bringing him forward as a witness in public?

788. Precisely; is it not his duty for the interest of his client, as well as his interest for his own profit, to extract from that witness all the information he can?—Undoubtedly; but I do not think the public interest and the proctors' interest at all conflict there, because this kind of examination is not chargeable; there is no fee on the private examination of witnesses; the proctor takes the witness into his office and communicates with him; but supposing the proctor communicates directly with the witness in order to acquire information with respect to the state of things, there is no charge for that, as I understand; I never heard of any fee being charged for such a thing as that; it is his business to take down in writing from the lips of the witness every thing he considers material; an information as to the facts within the knowledge of that witness. It is his duty to do so, out of that he frames the draft of his allegation, which is submitted to counsel.

789. *Chairman.*] Is the opposing proctor allowed to attend the examination of a witness?

a witness?—He is not present. Neither the proctor nor any other person, except the examiner and the witness, is present at the examination.

790. *Mr. O'Connell.*] The course is this, that in a private room the examiner (there being nobody in the room but the witness and the examiner), examines the party upon the allegations of the promovent or plaintiff?—Yes.

791. Then if the impugnatus chooses to cross-examine him, he exhibits interrogatories?—Precisely.

792. And after the proctor has examined upon the allegation of the promovent, he then proceeds to examine on the interrogatories of the impugnatus?—Yes, there being four days in Dublin to intervene between notice of the examination of the witness on the allegation and the lodging of the interrogatories.

793. And all that is done in private?—All that examination is strictly private.

794. And the examiner is not at liberty to disclose or let any body know what has been done until publication is ordered by the court?—Clearly, that is the course.

795. Then until all the evidence is given, nobody can know what any one witness has sworn to, but the witness himself and the examiner?—Nobody, in the regular course of practice; but you observe, there is a possibility of the witness being indiscreet enough to disclose it, not only to his own proctor, but the opposite party.

796. But nobody can know what has been written by the examiner, the evidence he has taken down?—Certainly not, except the examiner. The judge always has an opportunity; if he pleases he has a right to inspect the evidence at any time, as the witness is brought to the judge on his repetition, and the judge asks him, "Is that your evidence; do you wish any alteration made in it?" The witness is then repeated.

797. And then he is sworn again?—No, not sworn again; but he again affirms, under the sanction of the oath he has taken on the former occasion.

798. *Mr. Villiers Stuart.*] There is no opportunity of cross-questioning before publication?—O yes, there is; cross interrogatories are generally lodged, and there is this advantage over the Chancery practice, and a very great one it is, that the party cross-examining has distinct information of the facts to which his opponent's witnesses are to be produced, the articles being explicit, and containing a detail of all the particulars. It is not the case in Chancery, there is only a general description of the merits of the case; no specific allegation of the facts in the Bill.

799. *Mr. O'Connell.*] And the interrogatories in Chancery; if I remember right, no person can get copies of them?—No, they are quite private.

800. *Mr. Villiers Stuart.*] Does the party get a copy of what the witness has stated, or merely a statement of the allegations of the witness?—The system is shortly this; the allegation is put in by the promovent first, that allegation consists of a specific enumeration of the facts of the case in articles; the proctor, when he intends to examine a witness, hands to his adversary the name, residence and addition of the witness, with a specification of the articles in the plea upon which he intends to examine him; then the adverse proctor having read over these articles, knows precisely the line of facts and evidence which the witness is to depose to, and he frames his interrogatories with that full and explicit information of the facts.

801. *Mr. O'Connell.*] Let the Committee understand this distinctly; the impugnatus or defendant knows only what allegations of the promovent or plaintiff's pleading the witness is to be examined to?—He knows it, because his opponent is obliged to furnish him with a list of the witnesses, and to intimate the articles.

802. But what the answers given by the witness to these allegations may be, is a thing he does not know?—Certainly not; but a pleading is very ill framed, which does not contain a clear statement of the facts. It would be exceptionable and subject to revision and reform, and therefore the adverse proctor must be informed of the general purport of the evidence to be given against him.

803. That depends on this, if the witness sustains the allegation?—Just so; that is always presumed; because no man would be mad enough to produce a witness who would contradict his plea; he ascertains that beforehand.

804. In the case of an adverse witness, he may not be able to ascertain it?—It does sometimes happen; for instance, in the case of testamentary witnesses; a witness sometimes contradicts his attestation to the will, but that is always known beforehand.

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805. Mr. Lucas.] But usually a witness is brought forward because he is supposed to be a favourable witness?—I have scarcely ever known an instance where a witness contradicts; it frequently happens that they deny any knowledge of the facts; but I have scarcely ever known them contradict; however, it may arise, undoubtedly. And again, this is a very pertinent view of the question, that the examiner who privately examines the witness, on these articles, has a right, and very often exercises his right, of framing interrogatories at his own discretion, out of the articles; it is a very proper privilege, because it may be necessary in order to draw the witness's attention to what is material; and in order to get circumstances that are not disclosed in the article. Of all that, the opposing party can have no information whatever, and therefore to that extent his interrogatories may be blind.

806. Chairman.] You have sometimes attended the courts of common law?—Frequently; constantly.

807. Are you not aware that a witness in these courts is often made by skilful cross-examination to contradict a portion of his own evidence, and to throw discredit on his statements?—It frequently happens.

808. Do you not think that this system of *visd roce* examination, in the Prerogative Court, will have the effect of attaining the ends of justice in that particular way?—I think the system of cross-examination in every court, proceeding by deposition and secret and private examination *in scriptis*, is most inefficient as an instrument to detect falsehoods in testimony.

809. More especially defective in eliciting evidence from an unwilling witness?—Yes.

810. Or from a witness not disposed to tell the truth?—In that class of cases which so commonly arise, of a false claim or demand being supported by fraud, by fabrication and false evidence, I conceive the system of cross-examination, by written interrogatories administered in secret, to be perfectly inefficient.

811. Mr. O'Connell.] When you come to examine on the part of impugnant, it is from his reply to the allegation that the witness is examined in chief by the examiner, is it not?—Yes; he is examined on the impugnant's allegation replying to the promovent's. The pleadings in the Prerogative Court are called allegations; the parties each put in an allegation, which answer to the bill and cross-bill in Chancery, supposing there was a cross-bill; and these are all articulately framed, and contain a specification of facts, numerically arranged; the articles are numbered 1, 2, 3.

812. The number of paragraphs?—Yes.

813. Having a common commencement and a common conclusion?—Precisely.

814. Which is merely formal?—Just so.

815. Then the words of surplusage that have been formally used in the heading and conclusion of each article, of course, increases the expense very much?—Yes. I should observe upon that, that there are formal conclusions to every article which might be dispensed with, and frequently are, and tend a little by the introduction of unnecessary verbiage to prolong the pleadings; but I think an advocate who understands his duty frames his pleadings without any unnecessary accumulation of mere phraseology.

816. Has Dr. Radcliffe introduced any improvements?—Very great improvements with respect to abridging; he has cut off one pleading; formerly there were two, which was a cause of great and unnecessary delay, and this at a loss to the practitioners of the court, particularly the advocates who used always to have separate fees for preparing and correcting these additional pleadings which they lost.

817. Dr. Radcliffe has thus diminished by nearly one-half the duration of the suits?—No, not the duration of the suits.

818. The expense of the suit in the pleadings?—Yes; he has compelled parties now to be much more vigilant in preparing their cases in the first stage for proof, because, before, every proctor knew that although he might overlook or neglect various material parts of the evidence in the first pleading, he would have an opportunity of remedying that in a subsequent stage; he is now obliged at the peril of his client to do all that in the first instance, consequently so much time is saved, and certainly very considerable expense.

819. Chairman.] Do you consider that the judge would have sufficient time in this court to examine witnesses *visd roce*?—I do; I think there is a fund of time, as I said before, of the judge of the Prerogative Court, that is disposable for public purposes.

purposes, that may be turned to account; I do not think he has got enough to do at present.

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820. How many days a week during term does he generally sit for the expedition of business in public?—He sits on every Tuesday and every Saturday for 12 sessions; the terms do not exactly correspond with the law terms. He begins his terms as nearly as possible at the same time with the common law terms, and he sits in the long terms for 12 sessions, that is, 12 court days; and in the shorter term, the Easter term, he sits only eight court days, the time not permitting any greater number; these are Tuesdays and Saturdays, and then there is an extra day for hearing advocates, which falls on Thursday.

821. Mr. O'Connell.] At present he has no power at all to relieve himself upon the adjudication of facts by sending it to a jury?—None.

822. Chairman.] You have already stated that the Commissioners are interested in prolonging, and therefore delaying the business of the court; does not this necessarily tend to prevent the adjudication being carried into effect sooner than what it would under a *voir dire* examination before the judge; for instance, if a commission goes to the country, the parties that go there are interested, at least they are obliged, from the forms and nature of the thing, to have many days consumed perhaps in examining into a very small point or fact; that has to be brought up then to Dublin; that all delays perhaps a term and prolongs the time necessarily; the judge must also read over this, or examine into the points, and then the whole case is brought before the court a second time, one court in the country and another in Dublin, as it were; and more imperfectly brought before the court than what the witness, if he were under cross-examination in the face of the court, would necessarily make it?—I should say that a commission in the actual state of the practice of the court would occupy a larger portion of time, in speeding and returning it, than a trial by an open examination of witnesses in court in Dublin would do; I should say that on a guess, for really I am not competent to offer any decided opinion upon the subject. I am disposed to think, if it be practicable in any case to bring up all the witnesses to Dublin, and examine them in the presence of the judge and the public, that that operation would be completed in a shorter time, that the trial would be spent in a shorter time than if the same number of witnesses were examined by a commission in the country; I have no doubt of it; I am strongly disposed to think so, supposing that the trial went on before the judge *de die in diem*.

823. Now I wish you to direct your attention to giving a power to the judge of calling in the assistance of a jury on matters of facts connected with cases tried in this court, and please to give your opinion to the Committee?—I have not a doubt that, if the present system is broken in upon by the introduction of *voir dire* examination, it will be a material improvement, that the judge should have a power to try any question, or the whole case, if he thought it right in a particular instance so to do, through the medium of a jury.

824. Does it strike you that the judge himself must naturally be often embarrassed by his peculiar position of being judge and jury, if I may say so, in cases that come before this court?—It rarely happens, but it does sometimes happen in a very striking manner to the judge, to find a difficulty in disposing of some matters without *voir dire* examination, and without the assistance of a jury; but that is an instance of very rare occurrence; for the means of discovering the truth, under the present system, in most cases, is I think as efficient as trial by jury; but it may be more expensive, and may be more dilatory, and I think it is; at the same time I should observe this, that as the Court of Exchequer is constituted now, and as the Court of Prerogative is constituted, if the very same identical question was brought into the Court of Exchequer to be tried, and concurrently brought into the Court of Prerogative to be tried, I have no doubt, even with all the defects of the present system, and all the abuses that are stated to obtain in the Court of Prerogative, it would be tried and concluded as expeditiously, as cheaply, and as efficiently in the Prerogative Court as in the Court of Chancery. For instance, if the Committee will permit me, I will explain, that questions of pedigree very often arise concurrently in the Court of Chancery and in the Prerogative Court. Where parties claim, in cases of intestacy under the statute of distribution, to be entitled to shares of intestates' personal estate, they come into the Court of Chancery to have that question disposed of; and the right to administer under the same statute, or under the statutes in the same matter, is

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very often raised concurrently in the Court of Prerogative, by the same parties. I have been concerned in such cases concurrently going on in the two courts, and my decided impression is, that the system of the Court of Prerogative works efficiently for a more cheap, a more expeditious decision of a case than the Court of Chancery; I say the system, abstracting it from any abuse that may arise from misconducting the cause.

825. How would you remedy the want of power in the judge at the present moment; what suggestion would you give to the Committee with regard to this question of trial by jury?—My opinion would be, that if the present system is innovated upon, if there is a departure from the present system, by introducing *voir dire* examination, that that innovation should be accompanied by the introduction of the trial by jury under necessary checks or safeguards of the judicial discretion of the court.

826. I am to understand you to state, then, that you would not recommend trial by jury in all cases, but that you would give the judge a power of calling in a jury to assist his decision when there were difficult points to be decided?—I think so, and I would hazard with considerable confidence this observation, that it would be, as a general principle, safer that the judge of the Prerogative Court should have the power to empanel a jury and try the case himself than to send it either to the sittings or to the courts of common law, to be tried by a judge and jury; for this reason, that the office of the judge, when the jury is empanelled, being to charge the jury in point of law, and the system of law in testamentary cases and matrimonial cases being one that has grown up in the Ecclesiastical Courts, and forms a great body of jurisprudence upon a set of established principles, not so well understood by the common-law judges as by those who have administered justice in the Ecclesiastical Courts for so many years, it is more probable, that the judge would possess a greater degree of aptitude and ability in charging the jury than a common-law judge.

827. Mr. *Villiers Stuart*.] I think you recommend there shall be a discretion in the judge as to whether he should have the assistance of a jury or not; why should there not be that discretion always?—I will tell you the reason, that the system has been actually in use many years in Ireland, in the Assistant Barristers' Court the assistant barristers try all kinds of equitable and legal questions; every question that can be tried by any judge, may be tried by the assistant barrister under certain circumstances and amounts; I say almost every species of legal question may arise there, and almost every species of equitable question; but certainly the jurisdiction is limited to a certain amount, and the system has been found to work there very well; but, besides that, the reason why I think it essentially necessary that the judge should not be bound to try every case by a jury, but only particular cases, and either the whole or particular facts in any case, is this; the reason why I think it expedient he should not be controlled as to that discretion is distinctly this, that in every testamentary cause, or the majority of testamentary causes, and in matrimonial causes, there is a great deal of matter which is beyond the competency of a jury to decide upon, that is, of juries in general.

828. Matters of law?—Matters of mixed consideration of law and fact arise; to submit these to the verdict of a jury, would be often to submit them to chance; and, in fact, I believe it is not doubted now, that though all our lawyers agree that trial by jury is a perfect system for investigating facts in cases that are not complex but simple in their nature—ordinary cases of contract and the like—yet whenever very complicated and difficult questions, mixed up of fact and law, and requiring refined conclusions and reasonings, arise, it has been often found, that juries are not the very best tribunal adapted to the examination of such cases.

829. Mr. *Villiers Stuart*.] I believe it very often happens that a judge, in a case of record, desires the jury to find such a verdict, whatever they think, laying down the law to them?—Yes, the judge very often desires the jury to find in a particular way; that very often happens.

830. Might not that be the case in this instance, that there should be a jury always, and that the judge should lay down the law to them?—It is in the power of the jury to refuse to comply with that direction, and they have done so frequently. A remarkable case of that sort occurred in the case of the late Lord Timblestown's will, which has gone through all the courts in Ireland, I believe, and been tried almost everywhere; it proves how very doubtful a thing it is, whether a jury is the best tribunal to have the exclusive cognizance of a testa-

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mentary cause; that cause was tried by several juries; they differed in their verdicts; I have not the slightest doubt that the Ecclesiastical Judge or that the Chancellor, if it were necessary to make an election between a jury and a judge, would decide such a case as that more soundly and more surely than any jury would.

831. *Chairman.*] But it is your decided opinion, I understand, that the judge should have the power of getting the assistance of a jury when he thought it fit?—Decidedly.

832. Leaving the discretion in his own hands?—As an accompaniment to the projected alteration in the system.

833. Do you consider also that it would be judicious to leave a similar power in the hands of the judge as to the issuing of commissions?—I should think, if the new principle is introduced, that the rule should be always to try causes by *voir dire* examination, and the exception to grant commissions, in particular instances.

834. But you would leave it the power in the judge; where we will suppose there are several witnesses at a great distance, or from infirmity, or from other causes are unable to attend?—Yes.

835. Where it would be necessary or supposed to be necessary to issue a commission, you would leave the special cases in the discretion of the judge?—Certainly.

836. You think it would be important to do away with commissions in fact in toto?—It would be impossible in some cases, for instance, in cases where the witnesses reside abroad, then it is impracticable, because they are out of the jurisdiction; and so obvious is that inconvenience, that in the common law courts, when there was no power to examine in such cases otherwise than by *voir dire* evidence before juries, bills were constantly filed in Chancery to enable the parties to send out commissions for the examination of witnesses, and to make them evidence at the trial; that discretion, therefore, should be retained in order to avoid the necessity of resorting to the Court of Chancery at a great expense.

837. *Mr. Lucas.*] The practice and proceedings in the Ecclesiastical Courts are founded, are they not, on the principles of the civil law?—They are, on the principles of the civil and canon law; the Court of Admiralty is exclusively founded on the principles of the civil law; the Ecclesiastical Courts are founded on the principles and proceedings of the civil law courts so far forth as they are consistent with the statute and common law of the land, and subject to the control of the temporal courts; the true and technical way of stating that proposition is, that the law of the Ecclesiastical Courts is the King's law ecclesiastical administered in the Ecclesiastical Court; it is not the civil law nor the canon law, but those laws so far forth as they are admitted by the common law of the land.

838. But the practice is founded originally on the civil law?—Where the civil law is not excluded by some positive rule or principle of the common or statute law, it obtains.

839. The basis is the civil law controlled by the courts of common law?—By the superintending authority of the courts of common law, the King's Bench particularly.

840. The practice and proceedings of the Admiralty Court are founded on the civil law?—Yes.

841. The practice of the Court of Chancery, is that founded on the civil law do you conceive, or the common law?—I take it to be thus distinctly, that in the Ecclesiastical Court the court proceeds (when it is not prevented by the application of some rule or principle) according to the practice of the canon law; where the canon law fails it introduces the civil law, that is, the old Roman law as supplemental to the canon law where that fails; and both under the control of the common law tribunals.

842. Will you state to the Committee what courts in Ireland you conceive to be based in their practice upon the civil law, or into which the civil law enters?—Every Diocesan Court, that is, all the Consistorial Courts, and the Court of Prerogative proceed upon the rules of the canon law; if the canon law fails in any particular instance, they resort to the civil laws so far forth as they are admitted by the common law of the land to adopt the practice of either of those courts.

843. The same with regard to the Court of Admiralty?—The true style and title of the law of the Admiralty Court is the King's law maritime; it is the civil law so far forth as the superior tribunals allow.

844. Now, with regard to the Court of Chancery?—The practice of the Court of Chancery is taken from the canonists and from the Ecclesiastical Courts; that

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is to say, their general principles are taken from the canonists, and from the civil law precisely in the same way and order.

845. You have stated that with regard to Ireland?—It is an universal proposition in both countries.

846. The corresponding courts in England are guided by corresponding rules?—Yes.

847. Do you know any thing of the practice in the courts of Scotland?—Very little; I must know a little, because I am frequently obliged to consider it.

848. Can you state whether or not the practice of the courts of session or court of session in Scotland is founded or not upon the civil law?—Undoubtedly; I take it the whole body of law as administered in Scotland is founded on a mixture of civil law and the customs of the country.

849. Is it not the practice that in all courts where the principles of the civil law enter into the practice, depositions *in scriptis*, as you call them, are taken?—Certainly; it is a prevailing principle in modern jurisprudence as derived from the Roman law; but it appears to me that the ancients admitted both species of proceedings in the Roman courts and in the Athenian courts; it is quite clear that both modes of proof were resorted to indifferently; witnesses were examined; but the general principle there was to read the depositions just as they were taken in writing. The speeches prepared by the advocates in the courts of law, at Athens, prove that they sometimes took evidence *in voce*, and sometimes read depositions.

850. Then the objection that you have stated to exist to the practice of taking depositions *in scriptis* in the Prerogative Court in Ireland will apply more or less to all the courts you have just now alluded to?—Unquestionably; but I think that as far as I can venture to form a conjecture on the subject, there would be greater satisfaction in Ireland arising from the change of system; that is to say, public opinion would be more gratified, whether justly or not I do not know, by this intended alteration than in England; for I observe, by the opinions of the lawyers who have been examined here—the civilians—that they do not consider the change would render the court at all more popular.

851. As far as your own opinion goes, do you think that the change you have been suggesting for the Prerogative Court would be desirable also in the other courts you have just alluded to?—I should be very cautious in venturing an opinion upon that; I should be inclined to follow the authorities of the extremely eminent men who have been examined here, Dr. Phillimore, Dr. Addams and Dr. Dodson.

852. *Chairman.* With regard to the issuing of commissions, would you think it desirable that when commissions were issued it would be advisable to have the proctors on both sides allowed to attend the examination of witnesses on those commissions?—I should think it would be indispensable to have some legal agent attend; a proctor would be the proper man; I am liable to this error in every answer I give, that my mind is necessarily drawn back to the existing system.

853. Would you think it desirable to have the interrogatories submitted to the counsel or the proctors previous to the examination of witnesses in attendance on the commission, or to have it conducted as it is at present conducted in the common law courts when a witness is examined?—On commissions, (if a change takes place in the system conformable to the tenor of the question put to me, by introducing *in voce* examination,) then, in the case of commissions, there would certainly arise this inconvenience, the pleadings in that event would become much looser,—of a more general and summary nature than at present; they would not, as now, contain specifications of facts to which the witness is to be examined, and in that case the proctor would go down, or whoever was the managing man at the commission would go down, without a specific plea upon which the witness would be to be examined. He must substitute, in the place of that, direct interrogatories, and those direct interrogatories of necessity ought to be framed technically and with great caution and deliberation, because they contain the case. It might be dangerous to leave to the proctor on the spot the preparation of those direct interrogatories.

854. In the case of commissions, do you think it would be an improvement in these commissions to have the commissioners paid a fixed annual salary instead of being paid as at present by the day, according to the length of time the commission occupies?—I have not the slightest doubt that if the office of examiner should continue to be, under the new system, of any thing like the importance that attaches

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to it at present, that a remuneration by means of a fair and liberal salary is of the very essence of the secure administration of justice in the court; but I am there again embarrassed, because if the new system operates in a certain way, probably the functions of examiner might be abridged to a very great extent, and he would have little or nothing to do perhaps, or at least comparatively little, and then he would have a large salary for doing comparatively but little duty; but if the system continued on the present footing, I should say the examiners ought to get fair and liberal salaries, and ought to be rendered perfectly independent; in fact, I conceive they ought to be a sort of deputy judge, ought to be surrogates, and should be men taken, probably, from the learned profession, and quite independent of any connexion with practitioners.

855. Is it your opinion that it would be desirable to invest those officers with a considerable power in limiting the examination of witnesses in these cases, that it would tend to lessen expense and extent of business?—My idea is that very little discretion could be vested in the examiner in those cases, because I still think that notwithstanding the introduction of the system of *voir dire* examination, yet on commissions the examiner would have nothing to do, except to examine the witnesses on written interrogatories; those, I think, ought to be settled in Dublin, in the capital, before the commissioner goes out, and then he would have nothing to do but to administer these interrogatories; but it may be perhaps useful to suggest then this difficulty that occurs frequently in practice to my knowledge. When a commissioner goes into the country to examine, from the negligence of parties, and almost invariable inattention to their own essential interests, the most material evidence is frequently discovered after the commissioner arrives on the spot; and in such a case as that he would go down unprovided with proper interrogatories, and then the difficulty would arise, how is he to get on. I should say in that case upon application to the judge of the court that such fresh witnesses should be brought up and examined afterwards in Dublin at the discretion of the judge, because I really think it would be an inconvenient practice to entrust the framing of direct interrogatories to the proctor without having the opportunity of taking the advice of counsel. The direct interrogatories would then perform the office of pleading, and the pleading is always matter of great consequence to frame with due caution.

856. Would you in this instance give the opposing proctor the power of cross-examination before the commissioners in the country?—Certainly, cross-interrogatories, but to be equally framed before the commissioner leaves the ordinary seat of justice.

857. Mr. Lucas.] Will it not often be the duty of the examiner to extract all possible evidence from each witness he has under examination, with a view to the interests of the pleaders of the court?—I conceive it would not be in the power of the examiner to exercise any discretion upon that subject, because when the examiner goes to the country to examine upon a commission, according to the view I have been submitting, he would take down with him the interrogatories already prepared, and the cross-interrogatories, and he would have nothing to do but to take evidence applicable to those particular questions; he has no discretion to enlarge the commission himself, and put interrogatories framed by himself; that has never yet been thought a proper attribute to a commission under a court.

858. But the question has already been very properly asked by the Chairman, whether it was not the pecuniary interest of the examiner to lengthen the proceedings in commissions, and you gave an answer upon that subject?—As well as I recollect, what I answered upon that subject, was with a view to the present practice of pleading the facts preparatory to the examination, which may lead to an unnecessary multiplying of the depositions. That is a thing that could not take place under the new system. That would arise out of this state of facts; when the facts are pleaded articulately and specifically, then the proctor may exercise a discretion as to producing A., B., C. or any given witnesses, to 2, 3, 4, 10 or 15, or more articles, or only to one, and I say that in practice it is found, that they exercise that discretion generally to the unnecessary multiplication of proofs.

859. Chairman.] And to the increase of the depositions, of course?—To the increase of the bulk of depositions, but without any corrupt intent in the discharge of what they conceive to be their professional duty; I think that a necessary evil resulting from the system as at present arranged.

860. Mr. Villiers Stuart.] I think from the tendency of your examination, you

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are inclined to think it would be an improvement, if there were juries and a *voir dire* examination; and you stated, that the difficulties you thought were not insurmountable; could you state what the difficulties are that stand in the way of such an arrangement?—The first difficulty I conceive to be one that startles every experienced mind, I think, upon the proposing a general innovation upon a long established system of jurisprudence; that is the strong objection, and an alarming one it is at first sight; because you do not know how you can make it assort with your new experiments; but secondly, the difficulty that practically suggests itself to the mind is, how to reconcile the established system of pleading and appeals with the introduction of the trial by open examination of witnesses in court. The system of pleading is framed at present for the express purpose of secret examination, private and separate examination. Surprise has been prevented by the specific detail of all the facts of the case in the plea; the detailed allegation of all the facts gives your adversary warning what is to be brought forward on proof against him. That warning being given, there is comparatively little danger in a secret examination, because you know then what is to be proved against you, and you know how to meet that case by cross-examination; but if a new practice of an open examination is introduced, then it would be superfluous to set down minutely and distinctly and technically all the facts of your case in pleading; it would serve no purpose, because the end attainable by that specification would be attained in another way, namely, by the open examination and cross-examination of your witnesses; therefore, I think that to reconcile the existing system of pleading and the whole machinery of the court and the present system of appeals with the new system, would be a difficult undertaking.

861. *Chairman.*] There would necessarily arise, then, a difficulty from a new system in the whole management?—I think so.

862. And, therefore, necessarily an objection in the minds of the professional persons connected with the present practice?—I do not think that any of the practitioners would feel that; I think they are in general prepared to submit with good will to whatever is the determination of Parliament upon the subject.

863. What I mean is this, that professional men, who have been in the habit of conducting business in a certain routine, will naturally feel a repugnancy to have that routine altered by a new system being laid down?—I do not think that is the case in Ireland, though possibly it is in England, because of the line of demarcation between the two professions. In England the civilians would naturally feel reluctant in attempting to conduct the practice belonging to the common lawyer; but that is not the case in Ireland, because every lawyer in the Ecclesiastical Courts there, is regularly bred up to the bar, and has practised more or less in the common law courts, has gone circuit, and has laboured to complete his education and his efficiency as a *Nisi Prius* lawyer, and therefore would feel less incompetent, or less new in the practice of *voir dire* examination.

864. This applies only to one branch of the profession; it does not apply to the proctors?—No, it does not apply to the proctors. Indeed I think that the proctors would be exceedingly at a loss at first. I should add again, and I cannot too often repeat it, that though the leaning of my mind on the whole is to think that the public in Ireland would be better satisfied by a system of *voir dire* examination, yet I am far from giving it as my decided impression that it can be introduced with utility. I think the public would be better satisfied, and my own opinion is, that it would work well, and make the system better; but when I look at the host of authorities against that opinion, all men who are most eminent in their profession on this side of the water, and that they unanimously agree that it would be a change not for the better, I cannot but give my own opinion with very great diffidence.

865. *Mr. Villiers Stuart.*] In Ireland, where, as you say, the lawyers practice in the courts of common law as well as the Ecclesiastical Courts, you think there would be the same feeling against this change as there is in England?—No, I do not; on the contrary, I think the public will be satisfied; and that it is absolutely necessary, in order to give public satisfaction, whether from the prevalence of a general prejudice or otherwise. I think, in order to give satisfaction, it would be a material step to introduce the system of *voir dire* examination.

866. And also, from your examination I should suppose it would tend to lessen expense and to give increased facilities to the despatch of business?—I am inclined to think so; but it is very hard to give an opinion. I think if there were 20 witnesses to be examined in a particular cause, and you are to choose whether to bring them to the metropolis, and examine them *de die in diem*, or send commissioners into the

country

country to examine the same number of witnesses, it would be less expensive to adopt the former than the latter alternative.

867. *Chairman.*] From your general practice, you have had very frequent opportunities of knowing the working of the diocesan courts in Ireland?—I know a good deal about the practice of the diocesan courts.

868. Are there not appeals coming before the Dublin courts from the diocesan courts occasionally?—The appellate jurisdiction of the Consistorial Court of Dublin is very limited, very limited indeed; for some of the dioceses only in the immediate neighbourhood of Dublin belong to the metropolitan jurisdiction; but there are appeals come before the Consistorial Court.

869. Have you ever practised in any of those local or diocesan courts?—I frequently conduct cases that are carried on in those local courts, and I have been at the hearing of causes as counsel.

870. Is there great regularity in the manner in which these courts are conducted, or uniformity of practice?—Generally speaking there is an utter and sheer ignorance of the elementary principles of law and practice in those courts. Generally speaking, there are some remarkable exceptions, for instance, the court at Armagh. There the business is conducted very well. So in the great commercial town of Belfast, I should say that the practitioners in that diocese were competent men; I know they are clever men there. So in the city of Cork, I should say, there they are competent.

871. Are the judges in these courts, generally speaking, men necessarily of legal knowledge?—By no means; they are generally country clergymen, almost all, I think are clergymen; the vicars-general have frequently been laymen and lawyers, but they never personally preside; the surrogates are almost always clergymen, and with no knowledge whatever of the principles of law; but being generally men of education, it is to be observed, that they seldom stray widely from the land-marks of common sense, or the just appreciation of evidence; but they are totally ignorant of the principles of law.

872. Are the practitioners in these courts, to your experience, men that have sufficient legal education to conduct the business that comes before them?—Generally speaking not, but with some exceptions, I should say they are; I always except the courts at Belfast, at Cork and at Armagh, where I know the men are very competent to discharge the duties of proctors and judges; for instance, Dr. Miller, the eminent author, is the surrogate and acting judge of the court at Armagh, and, though he is no lawyer, his great ability enables him in a considerable degree to supply the want of a professional education; but that is a rare case.

873. Do you think that these courts and their business could be consolidated in Dublin without any very great inconvenience to the suitors throughout Ireland?—In all those cases carried on in the diocesan courts in which I have ever been concerned, and they are numerous, I do not know a single exception in which it would not have been greatly advantageous to the public and the suitor that the case should be conducted in the central court, in the court of the metropolis.

874. Are you aware that the business of these courts has diminished or increased of late years?—They have lost almost all their business; the only profitable business they ever had in those country courts was the tithe causes; that jurisdiction was taken away several years ago, and the consequence was, that proctors who were making a very comfortable and respectable income became almost penniless, were reduced to nothing by the abolition of that jurisdiction, and they were obliged to resort to other expedients to maintain themselves—became session attorneys, and so on.

875. The business therefore has considerably diminished?—Considerably diminished.

876. And in some of them, I believe, is very small indeed at the present moment?—Very small, next to nothing.

877. Not of such a nature as to induce men of education to turn their attention to practising in these courts?—Decidedly not.

878. You are aware also that a litigant in these courts has the power of appeal from the diocese to the archdiocese?—Yes.

879. And from the archdiocese to the Court of Delegates in Dublin?—Yes.

880. Under the system in the Dublin Court of Prerogative there is no such third appeal?—From the Prerogative there is only an appeal to the King, who disposes of that appeal by commission of delegates.

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881. At the other courts there is a treble appeal?—Two successive appeals; three successive courts.

882. Three courts which a litigious person may force a suit into?—Yes, the court in the first instance, the Diocesan Court, the Metropolitan Court, to which the appeal lies directly, and then the Court of Delegates, which ultimately decides the appeal from the Metropolitan Court.

883. This power of prolonged litigation does not exist in the Prerogative Court?—No, there is only an appeal from the Prerogative to the Court of Delegates; but it may be necessary to state, that according to the principles of the canon law which govern the Ecclesiastical Courts the liberty of appeal is carried to the extreme of license, and that is one of the subjects that demands most loudly the interposition of the Legislature, in my humble judgment. The canon law, whatever principle it is founded on, allows of appeals from every order, rule or decision made by the judge in every stage of the cause, and consequently arms such litigant with the means of vexatious delay, which was complained of always as a very great evil.

884. And is a source of very great expense in these courts?—It has not in my experience practically worked to any thing like the extent of mischief that might reasonably be expected; but it is observable that it requires the judge of the Prerogative Court to exert himself contrary to what he would be disposed to do to prevent the violent abuse that would arise from the constant interposition of appeals. He is a very experienced man, and very able to prevent in many instances those appeals which would operate very injuriously, and I think the discretion of counsel tends further to protect the suitor against that evil; but an unlimited license of appeals from every thing that may be called a grievance is a mischief which certainly calls loudly for redress.

885. Have you had any practice in the Consistorial Court of Dublin?—Yes.

886. Is it the same judge that presides in the Consistorial Court as the Prerogative Court?—It is.

887. Has that been the practice for many years?—It has been the practice during the time of the present judge, and of his predecessor, Dr. Duigenan; the two offices were united since 1785 (when Dr. Duigenan was appointed), at least whether they were exercised jointly before his time or not I am not quite aware. The patronage of the office of judge of the Consistorial Court and of the judge of the Prerogative Court is vested in two distinct prelates. The Archbishop of Dublin appoints the judge of the Consistorial Court, and the Archbishop of Armagh appoints the judge of the Prerogative Court.

888. Do you think that these two courts could, with advantage to the public, from the nature of their jurisdiction be consolidated?—I think they ought to be consolidated, and that it would be very advantageous to the public to have them united.

889. You have already stated it is the same judge that presides in both courts?—Yes.

890. And has presided so since 1785?—Yes, about that time, when Dr. Duigenan was appointed.

891. And the nature of their duties; are they very different or are they of a similar description?—Extremely similar; that is to say, that they are both the duty of administering the canon and civil law in different courts.

892. Do you see any rational or practical objection to their consolidation?—I do not; I do not think there can be any possible objection to that consolidation, except that it might be thought proper by the Legislature to indemnify that prelate who loses the patronage; the patronage is at present in two distinct prelates.

893. Now each court is distinct, and you conceive it would be an advantage to consolidate them? I do; I should think that, probably, for the consideration of public advantage, no objection would be made to a legislative measure.

894. Might not that be effected by giving the alternate appointment to both of these prelates?—The dignity and profits of those two offices are so totally unequal, that it would be impossible to apportion the patronage in such a way as to meet the ends of justice between those two patrons; the income of the judge of the Prerogative Court is 3,000*l.* a year, and the income of the judge of the Consistorial Court is only 300*l.* a year; you could not apportion the patronage in such a case as that.

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895. *Mr. Hamilton.*] In what respect do the two courts now differ, with the exception of the patronage or the judge of it; the same judge acting as judge for both, how far is the consolidation not complete, with the exception of that?—There is no consolidation whatever, except in the casual union of the two offices in the same person.

896. *Chairman.*] They have different offices?—Quite so; distinct in all respects.

897. Different jurisdictions in many respects?—One is local, and has a limited jurisdiction, and is a mere Diocesan Court. As to matrimonial cases, the Court of Prerogative has nothing to do with them at all.

898. The Consistorial Court is in fact the Diocesan Court of Dublin?—It is, of the city and diocese of Dublin.

899. The Prerogative Court is a court that extends its jurisdiction over the whole of Ireland?—Yes.

900. If it were thought proper to consolidate the other diocesan courts in Dublin, it was a matter of course that the Consistorial Court should be consolidated with that of the Prerogative?—Yes, it should follow the same rule, I conceive.

901. Are you aware of the nature of the situation of registrar, that he has very large emoluments in Ireland in the Prerogative Court?—Very large emoluments.

902. Have you any general idea about what the amount of those might be?—I am pretty sure it was returned by the deputy registrar from an official source of information, at upwards of 3,000*l.* a year.

903. Are the duties of the office performed by deputy or in person?—They are performed by deputy.

904. Entirely?—Yes, entirely.

905. Are the emoluments derived from a fixed salary or from fees?—From fees.

906. How is the deputy paid?—The deputy receives all the fees due by the suitor coming into his office, and he accounts for a certain portion of those fees with his principal; I believe that is the way it is done. The fact is, it is settled by contract; he pays so much to his principal as a sort of rent for his holding the office; I rather think that that must have been Mr. Hawkins' own evidence before the Committee; I am only speaking from recollection.

907. In the recommendation that you have already given, that similar officers should be paid by fixed salary according to the duties performed, do not you think that the registrar should come under the same rule?—Most decidedly; it would be clearly for the advantage of the public and the suitor that he should be paid by a salary, and separated in every possible way from any connexion with fees.

908. And that the registrar himself should be a man of experience and station, would you advise?—I think that the office of registrar of the Prerogative Court is one that requires ability, and respectability of character and public respect.

909. And experience?—And undoubtedly experience, and professional ability as a registrar, most decidedly.

910. Then in that case, under a new arrangement of these courts, would it not be desirable that he should perform the duties in person, whoever should be appointed under any new arrangement?—I think so; there cannot be a doubt about it; I cannot conceive a greater abuse or a greater absurdity than a judicial officer receiving emoluments who never attends nor exercises the duties in person.

911. We have a precedent, I believe, in the other courts for what Parliament has done in removing similar anomalies?—O yes; in Ireland a complete reform has been effected in that respect in the common law courts, where great offices, with large salaries annexed, were obtained by persons of very high rank, nominally acting in the offices, and where the business was done by deputy; as, for instance, as well as I recollect, the prothonotary of the King's Bench was some great man.

912. But in these courts that change has been already effected?—Yes.

913. But nothing of that nature has been carried into effect in the Prerogative or Ecclesiastical Courts?—No, there again we raise the question touching the rights of the patron.

914. In whom does the patronage vest of the appointment to the office of registrar of the Prerogative Court?—The Archbishop of Armagh.

915. *Mr. Villiers Stuart.*] With regard to the removal of the Provisional Courts, do you think that any very great inconvenience would arise to the people in the different counties, from their not having the means of resorting to any place in the neighbourhood where they could take out administration or probate to wills?—I

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cannot say that I should not anticipate some inconvenience from that; undoubtedly I should anticipate that; but when I speak of transferring the jurisdiction of these courts to a central court in the metropolis, I speak in allusion to causes of some consequence, testamentary or matrimonial; I should say with respect to matrimonial causes, that I have scarcely known that a case can arise in which it would not be more advantageous to the suitor, that the forum of trial, the seat of jurisdiction, should not be in Dublin preferably to any other part of the country, because they are always important cases; but then the question to which I would address myself is one which certainly creates a considerable degree of difficulty and doubt; and that is, where the assets are small of a deceased person, and probate or administration is wanted, whether it would be right to oblige that suitor to resort to a tribunal at a distance from his home; it is to be considered that from the facilities of communication, from the existence of a number of known officers for the purpose of transacting business of this kind in Dublin, that the transmission of the documents by post or other public conveyance would not be difficult, nor would it appear to me that that would necessarily or probably create greater expense to the individuals; there is this difficulty, that an administrator or an executor must be personally sworn in order to enable him to take on himself the duty of his office, and in cases of small farmers (in will cases) it certainly appears to me it is deserving of consideration whether they ought to be obliged to travel that distance, or be at the expense of a commission sent down from Dublin to swear them.

916. *Chairman.*] Would not that be obviated by having local commissioners in each of those dioceses to swear the parties?—Certainly that occurs; it occurs that that obviates certainly a part of the objection, for with respect to cases where there was no suit or contest they might be sworn on the spot by the surrogate for the diocese, or some other person appointed; but where a contest arises, and a trial or a judicial proceeding becomes necessary, then the doubt recurs whether or no it would be proper, in cases of very small property, to send the parties to Dublin, or to have the case determined below; there has been a recent Act of Parliament introduced which has transferred in some of these cases the right of jurisdiction upon wills to the assistant barrister, but upon which, however, the construction put by myself, and I believe other legal men, is, that it leaves a concurrent jurisdiction still in the Diocesan Court.

917. *Mr. Hamilton.*] And that is limited to a certain sum?—To a certain amount of assets.

918. *Chairman.*] We have at present in Ireland commissioners from the Court of Chancery, who are allowed to take affidavits and to swear to answers and other proceedings in that court?—Yes.

919. Might not a similar power be granted in certain districts in Ireland to give facility to poor persons to undertake administration where there are no suits or contests?—I should say it might be very well left with the present officer to do that; the surrogate of the diocese; if, indeed, you take away that court, the office of surrogate would be abolished, unless it were preserved by the Act of Parliament, and then, certainly, you might vest the power in those commissioners, or in the justices of the peace, singly, or at petty sessions.

920. And where any litigation arises on small sums, would it facilitate, do you think, the attainment of justice, by allowing a jurisdiction to the assistant barrister in these cases?—The assisting barrister, according to my recollection of Mr. Lynch's Act, has acquired concurrent jurisdiction with the Diocesan Court now to try and determine questions of controverted rights of administration and probate where the amount of assets is under a limited sum.

921. Should there be any doubt about this jurisdiction under the Act brought in by Mr. Lynch, do you think that it would be advisable in certain cases to give that jurisdiction to an assistant barrister, provided those local courts were consolidated in Dublin, as is suggested?—I have heard a great deal of controversy upon that subject, and many difficulties started; I know that it has been frequently discussed. I never applied my own mind particularly to the consideration of that subject, and should feel at a loss to give an opinion upon the subject. I have heard great difference of opinion as to the feasibility of that project; but if it be, as I think you will find is the case, that Mr. Lynch's Act has vested in the assistant barrister the right of determining questions of administration and probate, when litigated between claimants, and questions of probate and questions as to the validity of a will; if that be the case, then supposing the diocesan courts be taken away, the alternative or concurrent jurisdiction in virtue of which the party has the right of resorting

resorting to either of these courts would fall to the ground, and the assistant barrister then would remain the sole judge within the statute.

922. *Mr. Hamilton.*] Does it occur to you that that would be desirable?—That depends on the general question, whether it would be desirable to suppress the diocesan courts.

923. But do you think it would be desirable that jurisdiction in matters connected with civil law should be given exclusively to a barrister not necessarily educated in that particular profession?—I feel at a loss to answer that question. The difficulty arises in measuring the amount of assets which should vest the jurisdiction in those cases; at least that is one difficulty; in order to ascertain that there is a jurisdiction, and to prevent imposition on the courts by bringing cases into the barrister's court above the jurisdiction, it would be necessary to take an account of the assets in the first instance, and that certainly creates a very great impediment; and then you will observe it is an established principle of the common law, that if a tribunal not competent to entertain the question grants a probate, that probate is merely void; or I should say grants an administration of an intestate, that is merely void; and the consequence is, that all acts of the administrator are null, and great evils may arise in consequence of that, because all payments are void; payments of debts and discharges given by such an administrator are all null and void.

924. So that the law, as it stands at present, is liable to that objection; *Mr. Lynch's Act*?—I think it is; I am speaking now without having the Act before me.

925. But on that common principle?—Certainly, I should say if the Act has given the power to the assistant barrister to try testamentary questions, in cases where the assets amount to a certain sum, and he grants probate or administration in a case where the assets exceed that sum, his acts would be questioned, and great inconvenience may result, because the mere acts of such an administrator, after he obtains the administration, and before that is avoided by a competent tribunal, all the mere acts are null and void.

926. Could you suggest any means for obviating that difficulty?—I certainly would not venture to give any opinion upon that subject at present; it is too nice and too difficult a question.

927. *Chairman.*] Does it suggest itself to you that a question of that nature might be tried in the shape of a short issue, before the assistant barrister himself, with the power of impannelling a jury, as to whether the assets were or were not over and above the sum where he was limited to have jurisdiction?—The finding in that case, which would be very often a finding on imperfect evidence, is either a true or a false finding; if it is a true finding, certainly the verdict ought to be conclusive; but if it is a false finding, it would be exceedingly pernicious to make it conclusive; because then a fraud might be practised, and persons might get or snap an administration on fictitious evidence in the barrister's court, and that administration and the judgment of the court, often involving the most serious consequences, would become final and conclusive; because, suppose a man gets possession, under an administration of this sort, of 10,000*l.* in funded property, and makes away with it, there would be no remedy if the jurisdiction of the assistant barrister's court, on a finding of a jury there as to the amount of assets, is conclusive and irreversible.

928. *Mr. Hamilton.*] If I understood the question right, it was, that the finding of the jury with regard to the amount of assets should be final and conclusive in giving jurisdiction if it were less than the same amount?—I apprehend the question just in that sense; but observe practically the working of that system; supposing a man dies intestate worth 10,000*l.* in the funds, suppose the next of kin comes into the assistant barrister's court, and upon fictitious or false evidence proves the man to have died only worth a certain sum, 200*l.*, 300*l.* or 50*l.*, and the verdict is conclusive, he gets administration, and before it is possible or without there being a possibility of remedying that state of things, he makes away with the whole of the money, and cheats all the others entitled in distribution.

929. *Chairman.*] How would you obviate that by administration in the superior courts?—I am only putting a case in which a person with a fraudulent intent obtains an administration by imposing on the assistant barrister.

930. But does the present system obviate that fraud?—Yes, there are several checks; in the Diocesan Courts, for instance, they cannot grant an administration except the assets are all within the particular diocese. It frequently

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happens that there are attempts made to defraud those courts by obtaining on false swearing a probate or an administration; and in order to obviate that as much as possible, a certain time is established, before which no administration can be issued, or no probate can be issued during that period of time; the parties interested have time to inquire, and there might be guards of that sort imposed as checks upon the precipitate issuing administration in the barrister's court also.

931. Of a similar description?—I was applying myself to the difficulty arising from the uncertainty of the amount of assets giving jurisdiction; it was proposed to remedy that, that there should be a summary trial by jury, and the verdict should be conclusive; but that system would certainly be liable to great infirmities, because if the verdict is conclusive, then, whether false or true, it finally decides the right of the party to the administration; it cannot be made conclusive; it is impossible to do that, because then a party who is discovered the very next day to have no right to this administration, the court having no jurisdiction to grant it to him, and probably he being an impostor, a person who has no right at all to the administration obtains a conclusive grant. These are theoretical objections. I have not applied my mind particularly to the consideration of that subject. Under proper guards and restrictions, it may be very proper that the assistant barrister should have that jurisdiction.

932. *Chairman.*] Does it suggest itself to you that the same guards might be arranged for the assistant barrister's court, or similar guards as those that exist at present in the Diocesan and Prerogative Courts, so as to prevent the frauds which you anticipate?—That question may be properly tested by the consideration of a case where the party dies in a particular diocese, and it may become doubtful whether the jurisdiction belongs to the Prerogative Court or to that particular Diocesan Court; if he dies without assets, without any personal estate out of the diocese in which he dies, then the jurisdiction belongs to that diocese; if he dies possessed of personal estate in any other diocese, then it belongs to the Prerogative. The answer to the case arises often, or has arisen, in which a person has unjustly and fraudulently procured a diocesan administration, and made away with the property before the person who was rightfully entitled to it had time to contest his claim; such cases have arisen; to guard against that, there are only two checks now in practice, and they seem to operate sufficiently; one is, that the person is obliged to make an oath; and secondly, there is a delay takes place of a fortnight in the Diocesan Court of Dublin. No person can obtain any administration to an intestate or probate to a will until a fortnight after the death of the testator or the alleged testator or intestate, and during that time it is considered that other persons interested will have sufficient warning, and will be able, by caveat or otherwise, to prevent the issuing of an administration by surprise; whether that might not be obviated by interposing a similar guard, I do not know; I do not think it would operate sufficiently in all cases, because in the case I put of a diocesan administration, it is a single definite fact—did the man die possessed or not of any personal estate out of the local jurisdiction? But it is a very indefinite and vague question, whether a man died worth 50*l*, or whatever the amount is, 51*l*. 2*s*. 6*d*.

933. *Mr. Villiers Stuart.*] Supposing the courts were consolidated and held in Dublin, that difficulty would be removed, would it not?—Yes, as to all cases not coming within the jurisdiction of the barrister. There certainly is a palpable difficulty in ascertaining that the case is within the jurisdiction of Mr. Lynch's Act, because it is so vague a fact; if there be any definite amount of property giving jurisdiction, it is a thing next to impossible to ascertain; and it is to be ascertained immediately after the death of the intestate, whether he died worth this sum or that. When you once pronounce that a certain sum is to give jurisdiction, if the property exceeds that sum by one penny, it is out of the letter of the Act.

934. *Chairman.*] You conceive that this difficulty could not be sufficiently answered by having the power of impanelling a jury, and giving a certain time, after the death of the deceased person, to examine into the fact before the barrister?—I think that would be a very wise provision; but still I conceive that the jury could only find upon the evidence of reputation. What could the jury find upon? they could only find upon evidence of reputation; an accurate account could not be taken of the assets, and the only evidence they could have before them would be, what the neighbourhood thought as to his property; or perhaps they might be

be shown bonds or something of that sort; but then the negative proposition, that he had not more than a certain sum, would be very difficult to prove.

935. *Mr. Hamilton.*] Do you see any difficulty in confirming the jurisdiction of the assistant barrister's court in all cases in which, on the finding of a jury, it should happen to be under a certain sum?—I do; I see the greatest; because it is evident the principle of law in that statute is, that it is inexpedient to allow the barrister to determine the right to probate or administration, if the amount of assets exceeds a given sum. For instance, it would be inconvenient and improper if the property amounts to 20,000*l.* or 40,000*l.*, and consequently it would be a serious evil, and so considered by the Legislature, if in such case he did exercise the jurisdiction in point of fact, and that that exercise of jurisdiction was to be definitive and conclusive. It is inconsistent with the principles of the Act.

936. *Chairman.*] There is a system in a consistorial court, entitled technically "personal answers;" will you explain to the Committee what is meant by personal answers, and how far it would be judicious to change that system or not?—I have already mentioned to the Committee that the parties are bound, according to the existing practice of the Ecclesiastical Courts, to plead not only their general legal title, but the specific facts on which they make out their respective claims, in which respect they differ from the courts of common law; and upon these pleas being put in, containing a specification of the facts, it is the right of the party who pleads to require the personal answer on oath of his opponent to each and every of the positions or articles and statements of facts contained in the pleadings. Each party when he pleads has a right to the personal answer of his opponent, so soon as the answer is admitted to proof.

937. And these are entitled "personal answers"?—Yes, personal answers on oath, for which there is a process of a compulsory nature, to oblige the attendance of parties giving answers.

938. What is the objection to this process?—It practically works, in many instances, to swell out unnecessarily the amount of writing in the cause, the amount of written depositions; because it seldom happens that a party is personally cognizant of all the facts stated in his adversary's pleadings; if he is not personally cognizant of the facts, of course he negatives the article, and then the personal answer is totally useless as to that; it generally happens that the personal answer consists of direct negatives to nine-tenths at least of the pleadings; they are directly negatived; and it is quite apparent in most instances that that must be the consequence; consequently all this writing goes for nothing, and the expense of taking out copies and briefing, and all that.

939. Therefore you conceive it would be desirable to abolish this system?—I conceive that there might be substituted for it a system more efficient and less expensive; and that is by preparing personal interrogatories, to be administered to the party to which his answer should be taken on oath; the party who is bound to answer having the privilege of objecting before the judge to such of those interrogatories as were properly objectionable on account of prolixity, impertinence or scandal, and to have the interrogatories then settled before the judge.

940. That is always supposing that the present system should not be altered by taking *voir dire* examination?—No, that would be consistent with the new plan.

941. Of *voir dire* examination?—Quite so; it might be, perhaps, thought more expedient that the party should be submitted to a personal examination in court; but I should rather think that the system of interrogatories would be better; for, if the party were obliged to submit to a personal examination in open court there would not be the same check upon scandal and impertinence, and those other faults which are usually incident to examinations of that sort. Where the passions of the opposing party were excited, there would not be the same effectual check.

942. Have you been able to direct your attention to the subject of taxation of costs in the Prerogative Court?—I cannot say that my knowledge is very particular with respect to the subject; but I have applied my mind to it in a general way, undoubtedly.

943. Do you conceive it would be useful to alter the present system in some respects, and in what respects?—I think that the taxing officer ought to be a person independent in his circumstances, removed as far as possible from that sort of contagion which is derived from fellowship of practitioners, and from those causes that influence prejudicially the conduct of such an officer; in every way, I think, he should be rendered quite independent; and I think that a system should

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be adopted, as far as possible, to render taxation necessary and inevitable in every case whatever; in point of practice, taxation seldom occurs, either between party and party, or between client and proctor in the Ecclesiastical Court; there must be some prevailing reason for that; if it could be removed, it would be very beneficial.

944. Did it ever strike you that there might be a general court of taxation in which the costs of the different courts in Dublin might be settled by one, two or three officers appointed, who should have a general knowledge of those separate courts, and have a concurrent jurisdiction for the purpose of taxing?—I never did turn my mind to the consideration of that subject; it appears plausible at the outset; but there would be this objection, those officers would certainly be for life, and therefore might acquire knowledge; but they ought to have some practical knowledge of the system in each court.

945. I suggest a person taken from each court having a practical knowledge of the system adopted in each court, a professional person, of course?—I think that system would have this advantage arising from the subdivision of labour, that they would be more expert, having a peculiar province assigned to them, having their attention exclusively directed to it; I am far from saying it might not work well in practice.

946. The suggestion goes to that extent, that the parties should have no professional pursuit independent of their offices as taxing officers?—Yes, that would be necessary if this court were put upon a respectable footing and they were made a sort of judges with the right of determining all questions of taxation in all courts, they would become undoubtedly very expert from continual practice, and I dare say would be a very efficient tribunal.

947. Would it not have this effect, that coming together from different courts, but each man having an experience of some one or two or three courts, that the actual collision of opinion, if I may so say, and the removal at the same time of personal feelings and prejudices, would give the public a fair opportunity of expecting truth from such a tribunal?—Yes, I think it may be generally said that the larger the jurisdiction, the higher any judicial person or personages, and the more respectable you make them, the more efficiently and satisfactorily to the public they would discharge their duty; the larger the sphere is; and therefore I do think a general court of taxation would be on principle a good thing if it could practically be carried into effect, as we see now lately set up a single commissioner in bankruptcy cases; there is no doubt that the respectability of that officer, the footing of independence on which he is placed, will render that court more efficient than it ever was before.

948. Supposing such a court to be instituted, would you recommend persons of high station in their profession to be appointed to these situations?—That would depend in some degree upon the salaries; of course, persons of high station would not take any thing that was not well paid; their professions are too profitable to them to be given up except for considerable salaries.

949. The question presupposes the officer to be amply remunerated for the loss of his professional emoluments?—I should say that the best way in which that court could be filled would be to put professional persons into it of high character and respectability, whose moral reputation was unblemished, and who had a competent knowledge of their professional duties.

950. Are you aware that there is a great complaint of the expenses of the courts we are now examining into?—I know very well that there have been many loud complaints of the expenses; I am staggered by instances. I hear of particular cases, but at the same time I certainly do not think that either the system of the Prerogative Court, or the character of the majority of individuals who are now the practitioners of the court, would lead me to expect *a priori* a wanton or unnecessary waste of the suitors' money; but I was staggered when I heard the particular instances. I conceive nothing can be more respectable, in a professional point of view, than the majority of the gentlemen who practise as proctors in the Prerogative Court in Dublin.

951. The question does not presuppose any impropriety or dishonesty in the practitioners of the court; it rather applies to the general system, the ancient practice?—I have specified some cases of expense in that court; all the preliminary stages of a suit in the Prerogative Court are calculated on a principle of cautious preparation, the object being to bring the cause to a hearing before the judge instructed with full evidence and proof, so to prevent, as far as lies within human possibility

possibility, the chance of error or surprise; and, consequently, there are heavy expenses incurred in bringing the case forward in that perfect state. Contradistinguished to that practice is the practice in the common law courts; they hurry to trial, looking to the chance of remedying error and mistake and surprise by subsequent trials, and a re-examination of the same case; so that in every case of a complicated nature tried by a jury, there is almost inevitably more or less error; in all complicated cases it is almost inevitable. Error is scarcely incident to the decisions of the Ecclesiastical Judges; but there are those two counterbalancing evils of cost and delay; it is of rare occurrence that the Ecclesiastical Judge either does or can go wrong, but that is purchased by a great outlay in the preliminary stage. In common law proceedings, the costs are chiefly incurred at and after the trial.

952. *Mr. Villiers Stuart*] You alluded, in a former part of your evidence, to the abuse in the right of appeal in the Ecclesiastical Court; could you suggest some check to this system which would not trench too much on the right which could not be dispensed with?—I should think if cases were decided on the *ried* *roce* examination of witnesses, a good deal of what gives rise to appeals from interlocutory orders will cease to have existence; a good many causes of appeal will be cut off, because the preliminary proceeding to trial will be much abridged, or ought to be much abridged, by the new system; and then, as the whole case will come on for trial at once, or as nearly as possible, so there can be only one general appeal; but hitherto the preliminary stages of the cause were more numerous than is agreeable to the practice of the common law courts, and in every one of these stages there was some point or other at which the party might appeal if he were litigiously disposed; but I could suggest many methods, if the system is continued as it is at present, for abridging the opportunities or diminishing the number of occasions for appeals from grievances. I must at the same time say this, that although that is, doubtless, theoretically, a vice in the system, yet practically, under Dr. Badcliffe, it was a very rare occurrence to appeal, except from the definitive sentence; nor was it the case that there were many such appeals in the time of Dr. Duignan.

953. At the same time, supposing the system of *ried roce* examination were not introduced, what check would you suggest?—There is one very obvious one wherein the practice of the Admiralty Court differs from the Prerogative; that the party cannot appeal in the Admiralty Court from any interlocutory order or decision of the judge before final sentence, except in what are called cases of irremediable grievances; that is to say, where the rule made would operate entirely to destroy the chief interest of the party in the suit; where the decision, if unjust, would operate to destroy the main or primary interest of the party in the cause; in that case, which is called an irremediable grievance, he has an appeal from the Admiralty Court. In the Prerogative Court, every decision of the judge, with very few exceptions, is made the subject-matter of an appeal, and I should say it would be an improvement in practice that the appeal should only be from irremediable grievances.

Mercurii, 7^a die Junii, 1837.

MEMBERS PRESENT.

Mr. West.
Mr. Hamilton.

Mr. Villiers Stuart.
Mr. Lucas.

MR. WINSTON BARRON IN THE CHAIR.

Mr. Thomas Arthur Sheane, called in; and Examined.

954. *Chairman.*] WHAT are you?—I am connected with the legal profession, having served my apprenticeship to the late Mr. Joseph Minchin, a solicitor, in Dublin.

955. Have you had any connexion with, or business in, the Ecclesiastical Courts in Ireland?—I have a knowledge of the practice, from having been interested in a cause, instituted and pending there for the last three years, and from frequent attendance at those courts.

956. In which of the courts?—The Consistorial.

957. Have you had any thing to do with the Prerogative Court?—Frequently,
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Joseph Stock, Esq.

26 May 1837.

Mr. T. A. Sheane.

7 June 1837.

Mr.
Thomas A. Stace.
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whilst apprentice to Mr. Minchin, in procuring administrations and probates of wills for his clients, and in raising representatives for the purposes of suits in equity; I have frequently been present in court when causes were going forward.

958. Have you turned your attention to the practice and business of those courts?—Considerably so.

959. Have you found great difficulties in transacting business there, and delays and difficulties as to getting business done quickly?—From the practice of the court, it necessarily involves delays, difficulties and expense; by expense, I mean additional expense, in comparison with other courts.

960. The first process is called citation in these courts?—Yes, citation to bring parties in matrimonial suits before the court, or in the Prerogative, for the purpose of bringing in wills, raising representatives to deceased persons.

961. This process is called citation?—Yes; the same as subpoenas, or writs, in other courts, to bring parties before it.

962. In these courts, how many times is it necessary to have the citation served?—For the purpose of proceeding, as it is called, *in pais*, three citations are necessary; the original citation, citation *vis et modis*, and citation to all effects, upon the return of which last the promovent is permitted to libel *in pais*, the imputant being pronounced contumacious.

963. Does it strike you that these three citations are necessary to force a party to come in and appear before the court?—I do not think it at all necessary, as one citation properly served should be held sufficient, as a subpoena in the Court of Chancery or Exchequer is held sufficient for the purpose of entering up process without the service of a further process on the party.

964. What remedy, then, would you propose to prevent the delay and expense caused by this multiplication of citation?—That the court, within a limited time, if the party neglected to appear, should proceed at once in pain with the cause, analogous to the proceedings in the Court of Chancery, where, after the lapse of three months from the time of appearance, a notice can be served to take the bill filed as confessed; an intermediate monthly notice being served apprising the defendant of that fact at the expiration of two months from the appearance of a defendant, or from the time of a parliamentary appearance being entered for him by plaintiff; in case he neglects to do so himself, then a notice is served on the defendant, requiring his answer within a month, or the plaintiff will proceed to have the bill taken as confessed. The Court of Exchequer, when the party does not appear, or when he appears and does not answer plaintiff's bill, process runs on to sequestration, and then the cause is heard upon sequestration upon this process without serving any intermediate notice or order upon the defendant himself, which generally occupies about the same space, three months; the order for hearing on sequestration is served on defendant's attorney, in case the defendant has appeared but not answered.

965. Does any other observation suggest itself to you in the way of improvement on the question of citations?—Yes; in the Court of Prerogative there is a great practical difficulty in having the affidavit of service of citation made and returned to the court, for want of commissioners to take those affidavits in the country; and in many instances persons serving citations have been obliged to come to Dublin to make those affidavits before the judge of the Prerogative Court, or to proceed to a diocesan court, frequently 40 miles distant, to make those affidavits and procure a return from the vicar-general or surrogate of that court as to the due execution of the citation. This practice is productive of very considerable expense and inconvenience. If the Prerogative Court appointed permanent commissioners throughout the country, at convenient distances, similar to commissioners of the Court of Chancery for taking affidavits, it would greatly facilitate the proceedings and lessen the expense. The fee generally charged for making the affidavit and the return, by the vicar-general or surrogate, is 1*l.*; the fee charged for swearing an affidavit of service for the Court of Chancery is 2*s.* 6*d.*; the expense of travelling to those officers to swear affidavits for the Prerogative Court should be added, and in many cases the person has to travel a great distance. I have known persons serving citations brought 60 miles to Dublin for the purpose of making affidavits of service. The appointment of permanent commissioners would be a material service and saving of expense, in having persons obtaining probate and letters of administration sworn before them, instead of having a commission issued to a clergyman for that purpose in each case, which involves a cost of the commission of very nearly 3*l.*, exclusive of

of the fee of a guinea generally paid to a clergyman upon the execution of such commission.

966. Upon the question of citation is there any other point that occurs to you?—I think, instead of the present practice of having a citation served three days before the day of return named in it, that it might be served up to the day of return, giving the party served a reasonable number of days after service of citation to appear, as is the practice in both courts of law and equity. I should observe, that I have mentioned the subject of permanent commissioners for taking affidavits of service of the citations to one or two proctors, and they have approved of it.

967. Will you now direct the attention of the Committee to the subject of pleadings, and what is the consequence, in your mind, of the present system of pleadings in this court?—Having been interested in the cause of *Cooper v. Cooper*, now pending in the Consistorial Court, my attention was called to the system of pleading adopted, and the contrast it presented to that of pleadings in the Court of Equity, inasmuch as the parties do not put out the whole of their case upon the record, which necessarily involves additional pleadings and very great expense.

968. What do you understand by not putting forward the whole of their case?—The whole of the facts which they conceive necessary in support of the case, or for the defence; they do not generally put the whole facts in issue in the first instance.

969. Does the practice of the court then permit them to give a new statement, and thereby create new pleadings?—To give additional facts in support of the case of either the promovent or impugnans, farther allegations or farther articles.

970. Am I to understand by this, that the parties wilfully withhold a portion of their case, in order to bring it forward in what is called additional articles?—The immediate cause of their conduct I will not pretend to say; the parties can do so; the party can keep a part of their case and allege it at a future period.

971. Will the witness please to state, as clearly as possible, how this provokes or causes additional costs and delays?—In the cause of *Cooper v. Cooper*, to which I have before alluded, the promovent filed her libel in pain, though impugnans, after having waited a considerable time, and allowed the production of witnesses, came in and excepted to the jurisdiction of the court, by a pleading to which the promovent was obliged to file a replication; this part of the case having been heard on affidavit, and the judge having decreed the impugnans to be within the jurisdiction, the impugnans then filed his peremptory exceptions to the libel, alleging part of his case; to these pleadings the promovent filed her replication, and the parties proceeded to examine their witnesses; when the promovent's witnesses were examined, and the first, second and third terms probatory had lapsed, then the conditional order for publication was applied for, but, as I believe, for the purpose of delay, impugnans's proctors applied for the personal answer of the promovent, thereby making the proceedings in this court partake of the nature of a court of law and a court of equity.

972. What is meant by the law term, "terms probatory," which you just made use of?—That is a term used in the Ecclesiastical Courts for rules antecedent to the obtaining the rule, or the conditional order for publication; there is no such rule known in the Courts of Equity; these terms must lapse before the conditional order for publication is obtained; after the personal answer had been filed, the impugnans then applied to the court and obtained liberty to file additional articles, by which he set forth an additional cause of defence, all of which was within his knowledge at the time of his filing his original exceptions; on these pleadings the promovent was also obliged to join issue, which she did by contesting it negatively, which she had a right to do by the rules of the court, without filing any additional pleadings; she might, had she been so advised, have filed an additional pleading to it; all the terms probatory which had previously lapsed, and the conditional rule for publication, were, by the filing of these pleadings, rendered nugatory, as witnesses had to be and were produced in support of this additional pleading; the terms probatory again lapsed, and a conditional rule for publication was obtained, when impugnans's proctors called for the personal answer of the promovent to these additional articles, which caused considerable additional delay and expense; I should observe, that I believe those personal answers were called for solely for the purpose of delay, and I believe copies of them were never taken out by the parties having required them.

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973. How would the witness prevent this unnecessary multiplication of answers and of pleadings?—By a similar practice to that of the Court of Chancery and Exchequer in Ireland, or in both countries, that the bill should set out the whole of the plaintiff's case, and the answer the defence; and when issue joined upon it, that no further pleadings, containing matter within the knowledge of the party at the time of filing their original pleadings, should be permitted to be filed without the permission of the court, such permission to be obtained on special application, grounded on such evidence as the court should deem satisfactory. There is no proceeding in the Ecclesiastical Courts analogous to bills of revivor in the courts of equity, as the cause proceeds upon the death of parties generally, without any revival; and, besides, generally there are only the parties promoveant and impugnant concerned in causes in Ecclesiastical Courts, the interests of collateral parties not being generally brought before the court, by making them parties to the proceedings, as is the custom in the courts of equity. For instance, trustees in deeds and executors named in wills very generally possess the same character and stand in the same relative situation with regard to the property vested in them. If a bill is filed in a court of equity, all parties interested in the deed creating the trusts and vesting the property in the trustee must be brought before the court to make it a perfect proceeding; whereas in a suit in the Ecclesiastical Court, instituted to prove a will, the individual proceeding to prove it and the caveator are the only parties necessary in such suit, and are the only parties before the court in the suit, although the devisees in the will may be the real parties interested in the property. I should observe, that parties interested may come in as intervenients, and take a part in the proceedings; but for the purpose of the suit it is not absolutely necessary that they should be parties.

974. The witness proposes that all parties interested should be cited to appear by their proctors or attorneys before the court, if I understand him rightly?—I conceive it would be a great improvement, with regard to the validity of wills, that all parties, having either a direct or contingent interest, should be cited.

975. With regard to the examination of witnesses to pleadings, has it occurred to the witness that any practical injury has arisen from the present system?—Yes, in my opinion, it is not a good mode of eliciting truth, or rather, the whole truth, for this reason: in the cause of *Cooper v. Cooper*, a witness friendly to the impugnant, was produced by the promoveant, and in his examination to one of the articles in the libel, he evaded giving direct answers to the facts stated, by saying, that he heard and believed them, although those facts were within his own direct knowledge. This description of answer would be insufficient to support the case.

976. Am I to understand from the witness, that an answer is permitted in this court which would not be permitted in other courts of law or equity?—It is the being examined to pleadings instead of interrogatories, an answer of this description can be given, which could not be given if examined to interrogatories. I should observe, that the pleadings merely state a fact, to which a witness may merely say, that he heard and believed the fact stated, although it was within his actual knowledge, and could have given direct evidence to it; whereas, if examined upon an interrogatory, according to the practice adopted in courts of equity, he should set out the cause and reason of his knowledge, by which means he could not suppress his own actual knowledge, which would have the effect of making it sufficient evidence.

977. The improvement then that the witness suggests would be, to have all witnesses in this court examined upon interrogatories?—Yes, upon interrogatories, both direct and cross; they are cross-examined upon interrogatories.

978. Does it suggest itself to the witness, that a *voir dire* examination would be a preferable mode, where that can be obtained?—Certainly; if the court could be assisted by a jury on matters of fact, it would be a very great improvement; and I believe it is the opinion generally entertained by professional persons.

979. Mr. West.] But with or without the assistance of a jury?—I think with or without; but particularly with the assistance of a jury as to matters of fact.

980. There are cases where the assistance of a jury would not be absolutely necessary?—I think the calling in a jury should be discretionary with the court, to a great extent.

981. At present matters of fact are ascertained by this imperfect mode you spoke

spoke of; but supposing the jurisdiction to remain as it is, as to the decision upon those matters of fact, do not you conceive that a *viva voce* examination would be still preferable to the examination in the mode in which it is at present conducted?—Most decidedly; a decided improvement, both the mode and manner of the witness giving evidence, can be observed by the court, who has to pronounce upon the fact stated by the witness, which there is no means of observing at present.

982. *Chairman.* Has the witness had any opportunity of consulting with parties interested in the practice of these courts on that particular point?—I have.

983. Either proctors or advocates?—With one proctor certainly, and a great many other legal persons; and their decided opinion is, that a *viva voce* examination would be of advantage to the public.

984. And would it be likely to curtail the expense and delays of the court?—Certainly; and further the ends of justice.

985. Can the witness give any fact in illustration of his opinion on this point, of the examination of witnesses by interrogatories?—I can; in the before-mentioned cause of *Cooper v. Cooper*, two witnesses were examined by the impugnant to articles of his exception, and it appears that they stated that a marriage had been celebrated between the impugnant and a Miss Clutterbuck, by the Rev. Joseph Wood; but when cross-examined by the promovent, they admitted that they never saw this person whom they identified as the Rev. Mr. Wood, before or after the occasion upon which he was alleged to have performed that ceremony. It is therefore apparent, that if these witnesses had not been cross-examined, the fact of the marriage being celebrated by the Rev. Joseph Wood, or by a person named and identified by them as the Rev. Joseph Wood, could not be doubted; but the cross-examination shows they had no means of knowing who the individual was who performed the ceremony. My opinion is, that a willing witness or a friendly witness, by being examined to pleadings instead of interrogatories, may give direct evidence in support of a case not warranted by his actual knowledge; and on the contrary, that an unwilling witness may, by adding the words "heard and believed," render his evidence altogether useless. Neither of these state of facts would be likely to occur if witnesses were examined upon interrogatories; besides interrogatories are pointed to the matters in issue, and do not go into the entire facts stated in the pleading, many of which may be immaterial to the issue. Examination upon interrogatories would also render the evidence concise and pointed to the matters in issue.

986. Has the witness ever turned his attention to the rules of court as at present established?—I have.

987. Does he consider those rules to be advantageous to the public or otherwise?—Quite the contrary.

988. In what respect are they disadvantageous?—That the greater number of the rules are altogether unnecessary, and create considerable expense.

989. Am I to understand from the witness that there are a great number of rules more in these courts than in other law or equity courts?—Decidedly.

990. How is it that that practice has originated, or what is the natural consequence of it?—The natural consequence is, the rules are continued from court-day to court-day; whereas, in courts of law and courts of equity, rules are only entered when real matters of business are to be performed. In the cause of *Cooper v. Cooper*, the original citation in the cause was returned on the 12th April 1834. Proxy exhibited, and appearance of impugnant expected, *in pro*, that is, next court-day; on the 15th, a rule of the appearance of the impugnant was expected to this day; and between that day and the 7th of June there were no less than 14 rules of that description entered, upon each of which I understood the proctors and registrar to be entitled to fees.

991. Has the witness any opportunity of knowing whether the fees were actually charged in this case for all these rules?—The costs are not yet furnished in this cause; on the 7th of June a citation *vis et coedis* was decreed, grounded upon an affidavit made by the promovent, which citation was returned on the 21st of June; but in the intermediate time, three rules, similar to the former, that is, of appearance of impugnant expected *in pro* was entered. And in this cause of *Cooper v. Cooper*, I am aware that parties employed on behalf of and concerned for the impugnant, though not appearing for him, watched the proceedings, and upon applications by promovent's proctor to have the several

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citations returned, appeared in the character of an *amicus curiæ*, with the view of preventing their being returned; and that, in point of fact, it had the effect of retarding the progress of the cause very considerably; and, in fact, the judge has, upon occasion of such interference, required to know for whom such parties were concerned, having a strong suspicion, as I believe, that they were actually concerned for the impugnant; but they declined stating that they were so, and merely represented themselves as *amicus curiæ*. I am also perfectly aware that the judge did every thing in his power that a judge should do to have the cause proceeded with; but from the nature and constitution of the court, it could not be done with that effect as in other courts which are placed upon a better foundation.

992. Have you turned your attention to the principal causes of delay in this court?—Yes, I have illustrated them by these citations, rules, and by the system of pleading which I before alluded to.

993. Does any other point occur to you that causes delay?—I think I have mentioned them generally, that is, the practice of pleading and requiring personal answers, and these rules beginning *de novo*, with regard to passing publication.

994. Does any point occur to you on the question of personal answers?—Decidedly; I think that if a personal answer is required, it should be called for in the first instance, and not protracted till after witnesses have been examined.

995. What would the effect of this be?—The effect of it would be, that when publication were about to pass, the party could not further retard the progress of the cause by then calling for the personal answer.

996. Now, as to the costs of motions, when the parties succeed, what is the practice with regard to costs; is it analogous to that of other courts?—It is, as to their being within the discretion of the court; but the practice of enforcing costs from the unsuccessful party has not been so strictly enforced as it is in courts of law and equity.

997. Is not this a great practical grievance to suitors sometimes?—Certainly; in other courts of law and equity, it is the habit, before parties are allowed to appear, after having had process against them, to make the payment of costs part of the terms of their being then permitted to appear and defend themselves. I should state, perhaps, that this observation applies merely to the cause of *Cooper v. Cooper*, as I do not like to make it a general statement.

998. The Committee wish you to direct your attention to the costs of depositions, pleadings and exhibits, and to know from you whether these are equitable, or consistent with the practice of other courts?—Certainly not. In courts of equity the parties each take out a copy of the other's pleadings, and are not obliged to do so a second time, the examination of witnesses being upon interrogatories; exhibits or documents put in issue, are generally annexed to pleadings in Ecclesiastical Courts, by which the costs of copies are increased, because the exhibits must be also copied with the pleading; a document referred to by a pleading in a court of equity is stated in the pleadings, and afterwards proved by interrogatories, and consequently no costs of copying it, or paying for an attested copy, are incurred; but here, when publication passes, both parties are obliged to take out an entire copy of the pleadings, exhibits, interrogatories and depositions, by which means the pleadings and exhibits are paid for three times, and the interrogatories and depositions twice, each party being obliged to take out, before they proceed to hearing, a copy of the entire; the costs of exhibits frequently amount to a considerable sum; I should state, I was present in the Prerogative Court on a recent occasion, when several printed books were delivered in with the pleadings as exhibits, but the case appeared so monstrous, that, upon the application of the opposite proctor, the court directed that those books should not be copied or charged to him upon taking out a copy of the pleading filed; I merely mention this as an illustration of the practice of annexing exhibits to pleadings; these books were exhibited in a cause in which parties of the names of *Risk* and *Baird* were concerned.

999. As to the costs of depositions, has the witness stated his opinions on that particular point to the full extent?—Certainly not.

1000. Then be pleased to give the further information to the Committee upon that point?—There is a fee of a guinea paid on the direct as well as on the cross-examination of each witness, even though his deposition were of the shortest nature;

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nature; but if it exceeds a certain quantity, I believe 16 sheets, a further fee of a guinea is charged; and in the cause of *Cooper v. Cooper*, a second fee had to be paid for the same witness, his re-examination being necessary, caused by filing the additional pleadings, and which could have been avoided if no additional pleading had been filed; this frequently exceeds that charged by examiners in the courts of equity, the fee being, as I recollect, only 2 s. 6 d. in the Court of Chancery. I should observe, that I believe the examiners in the Court of Chancery have salaries, but the examiners in the Prerogative and Consistorial Courts have none.

1001. Has it occurred to you, that any considerable delay has arisen in the Consistorial Court, with regard to the examination of witnesses, from the absence of the examiner or otherwise?—It has occurred to me, that there being but one examiner, that is, the deputy registrar belonging to this court, the parties may be considerably retarded; and, in the cause of *Cooper v. Cooper*, the examiner was upon one occasion for a considerable time absent in Scotland, on a commission, whereby promoveant could not proceed to examine her witnesses in that cause; and I think that Dublin should never be left without the presence of an examiner, or that, in cases of commissions, what are called commissioner examiners should be appointed, as is the practice in courts of equity, such commission examiner to be approved of and appointed by the court. And I further conceive, that persons in the neighbourhood of the place where the examinations were to be had, might be appointed, by which means an enormous expense would be saved to the parties in day fees, and travelling expenses. This practice has been also adopted in the Court of Chancery, with, I believe, very beneficial effects; and I do conceive that many competent persons, such as solicitors and attorneys residing in the country, could be had who would discharge the duties faithfully and correctly, as they do at present, under proceedings in courts of equity.

1002. As to the costs of examination of witnesses on direct and cross interrogations, how are the fees to the examiner at present measured; is it by the length of the examination?—When a commissioner examiner in the Prerogative and Consistorial Courts goes into the country, he is paid at a certain rate *per diem*, and a certain rate *per diem* for travelling, measured by the distance.

1003. Does not this naturally tend to prolong the evidence and examination of witnesses, the examiners being paid *per diem*?—In practice, I do not think it has; when the examiners commence the examination of witnesses, I believe they go through it with all degree of fairness and despatch.

1004. But it gives the power to the examiner clearly to prolong the examination, should he so wish?—It certainly does, to proceed slowly with the examination of witnesses; but I believe an instance of the kind has never occurred, nor have I ever heard of it; with respect to Mr. Samuels, the deputy registrar and examiner of the Consistorial Court, I have known him to put himself to considerable inconvenience for the convenience of parties in the examination of witnesses, and, so far as he is concerned, no objection can be made to his doing his duty as examiner; he is a most obliging and pains-taking officer.

1005. On the whole, do you conceive it would be more judicious to have the examiners paid a yearly salary, rather than being paid by the day?—Most decidedly; no officer should be paid by fees, in my opinion.

1006. With regard to the rules, do you conceive it would be beneficial to the public to have them assimilated to those of the Chancery and Exchequer, and in what respect?—Most decidedly; rules similar in their nature to rules to plead and rules for judgment in the law courts, and a great variety of what are called side-bar rules in the courts of equity in Ireland, obtained by the attorney or solicitor in the offices without special application to the court, and upon which they are entitled to certain defined fees, would, I believe, if adopted by the Ecclesiastical Courts in Ireland, be of considerable advantage to the public, and greatly facilitate proceedings, as parties would then be obliged to comply with the terms of those rules, unless cause shown to the contrary within the time limited by such rules, all rules at present in Ecclesiastical Courts being obtained in open court.

1007. Do you think it advisable that process from the Consistorial Court should extend to all Ireland?—Certainly, if that court had cognizance of matters extending over Ireland, and which, I think, should be the case in matrimonial suits, they requiring a judge competent as the judge of the Prerogative and Consistorial

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historical Courts must be, in my opinion, for that purpose; the vicars-general of the diocesan courts not having, as I believe, in general, sufficient knowledge.

1008. Did it ever occur to you that a consolidation of the diocesan courts in Dublin would be desirable?—As to certain matters, such as matrimonial suits, and suits of importance, requiring the ability and talent of an able judge.

1009. Are you aware that their business in other matters, at the present moment, is very limited indeed?—Very inconsiderable, in consequence of the passing of the Tithe Composition Act, principally.

1010. Perhaps another cause of the diminution of causes in these courts is, the bad repute which they have got into?—I think parties, in consequence of the expense and uncertainty, are extremely unwilling to proceed in the diocesan courts, and, indeed, in all Ecclesiastical Courts.

1011. Do you think an improvement could take place in the citations for testimony in these courts?—Most decidedly.

1012. In what respect?—The present practice is to issue a citation for the attendance of the party, which is only returnable in term time, and therefore, if the witness is unwilling to attend, he may avoid doing so during the vacations; the consequence of which is, that causes may be greatly protracted. All Ecclesiastical Courts should, as I think, possess the power of compelling at all times (whether in term or vacation) the attendance of witnesses, and that the witness should not have it in his power, unless prevented by unavoidable necessity, to delay or postpone such attendance; and that in cases of wilful neglect the court should be armed with power to punish the party; and that, in fact, the attendance of witnesses in Ecclesiastical Courts should be placed on a similar footing to those of the courts of law and equity.

1013. Are you aware of any difference in the cost of briefing between these courts and the courts of law and equity in Ireland?—Yes.

1014. State them to the Committee?—The cost of a draft brief in the Court of Chancery in Ireland is at the rate of 3s. 4d. late currency, for every skin, that is 15 office sheets of 72 words; whereas the cost of a draft brief in the Ecclesiastical Courts is 3s. 4d. for five office sheets of 90 words, giving in the Courts of Chancery 1,080 words and in the Ecclesiastical Courts, for the same money, only 450. I should observe that in the equity side of the Court of Exchequer, 3s. 4d. per sheet for about the same quantity of matter as in the Ecclesiastical Courts is allowed for draft briefs; and the same fee for draft briefs of pleadings is allowed in all the courts of law; this fee only applies to what is called original matter, that is, bills, answers and depositions in courts of equity, and declarations and other pleadings in courts of law; but for the briefing documents, such as deeds, wills, &c. there is no draft brief allowed in courts of law or in the Court of Chancery; but I believe the charge for draft briefs in the Ecclesiastical Courts extends to the entire brief, no matter of what it may be composed, whether original matter or copy of documents.

Sabbath, 10th die Junii, 1837.

MEMBERS PRESENT.

Mr. Lynch.
Mr. O'Connell.
Mr. M. J. O'Connell.

Mr. French.
Mr. West.

MR. WINSTON BARRON IN THE CHAIR.

Mr.
Thomas A. Skeane.

10 June 1837.

Mr. Thomas Arthur Skeane, called in; and further Examined.

1015. *Chairman.*] ARE you aware what is the custom with regard to what is called in the common law and equity courts "term fees;" and whether any similar practice exists in the Ecclesiastical Courts?—Term fees are allowed in the courts of law and equity in Ireland to attorneys and solicitors, no such fee exists in the Ecclesiastical Courts; the term fees are given in lieu of fees for particular acts, such as filing pleadings and affidavits whilst Causes subsist, for which in courts of law and equity no fee is allowed to attorneys and solicitors, that

that is for this particular act of filing an affidavit or filing a bill or answer, but in the Ecclesiastical Courts they have a separate fee upon every act.

1016. Do you conceive that this practice is objectionable?—Certainly, inasmuch as it increases expense unnecessarily.

1017. What would be the advantage of this course that you recommend to the suitors?—That all the separate fees on filing affidavits and pleadings, and merely formal business in the court would be saved to the suitor.

1018. Are you aware of any objection to this course?—None whatever; on the contrary, I think it would be a great advantage.

1019. Are you aware that it is the custom to charge clerk's fees in addition to the charge of 10d. per sheet for different proceedings in the Consistorial Court?—I now hold in my hand attested copies of two affidavits in the Consistorial Court, on each of which is marked the fees at the rate of 10d. a sheet, and in addition there is a fee of 1s. 1d. marked on each for clerks; the affidavits contain six office sheets each, the charge is 5s. and 1s. 1d. for clerks.

1020. Is not this contrary to the rules that have been adopted and sanctioned by the judge?—I believe that this is an excess in those cases.

1021. How does it happen that the fee then is submitted to by practitioners, are you aware?—I am not aware; I believe they usually pay the fee marked by the officer without disputing it.

1022. Who is it that regulates this matter in the court?—The registrar of each court; they are the persons who make the charge, and are afterwards the taxing officers; the judge of both courts has the ultimate power of regulating the taxation; there is an appeal to him, but the registrars are the taxing officers in the first instance.

1023. In the Prerogative Court has any attested copy come before you where the charge appears to be more than that laid down by the judge in that court?—Yes, there is one in the cause of *Brereton v. Corhoy*.

1024. What was the charge made in that instance?—The fee marked on the back of the document appears to be 7s. 5d.; the document contains only three office sheets, which would at the usual rate be only 2s. 6d.; probably there might have been in this hulk sum a charge for search, but it is put in hulk, and there is no specification of how it is composed.

1025. It appears that this charge, whether right or wrong, is made at least irregularly on the face of it?—Evidently so.

1026. Is the facility given to appeals in this court greater from your own general knowledge than the facility given in other courts?—Yes, there being no deposit made in order to bring an appeal from the decisions of those courts, as there is in the Court of Chancery, where a deposit is made before an appeal can be made from an order of the Master of the Rolls; this deposit greatly tends, I believe, to prevent vexatious appeals.

1027. Do you consider that a new Court of Appeal from the present Ecclesiastical Courts would be beneficial?—Yes; I think that if an appeal to the Court of Exchequer Chamber, which sits periodically when it is necessary to have business brought before it, was adopted instead of the Court of Delegates, it would be of great advantage, and save considerable costs which are now incurred in having a commission issued to the Court of Delegates for each particular case.

1028. The number of appeals, you apprehend, would be greatly diminished by this change?—Yes, making a deposit in the first instance, or giving security, would tend to prevent vexatious appeals; I should observe, that the judge of the Prerogative Court should at all times be a member of the court of appeal, whatever it might be.

1029. Mr. West.] What is your opinion with respect to the present constitution of the Court of Appeal as far as the masters in Chancery are concerned; do you consider that bringing the master in Chancery into that Court of Appeal, is advantageous or not?—Quite disadvantageous in reference to their duties as masters, for they are very frequently obliged to leave their offices for the greater part of the day, and the business is adjourned, which is a great practical evil.

1030. Do you consider that the masters in Chancery, from the nature of their duties as masters in Chancery, are fit and proper persons to be constituted as judges in an appeal from the Ecclesiastical Court?—I think their entire habits and practice being so different it must render it very difficult for them to give a satisfactory judgment in matters of Ecclesiastical law.

1031. You stated that, by the practice of the Ecclesiastical Court, the pro-

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movment is at liberty to state only a part of his case originally in a libel; is that so?—Yes; they need not give the entire facts.

1032. Do you mean to say this, that the promovment is not bound in the first instance to state such a case as will entitle him completely to relief, supposing that case admitted by the impugnant?—He must state a case to entitle him to relief.

1033. You are aware that in a declaration in a court of law, or in a bill in a court of equity, if a complete case is not stated, the defendant may demur to that case?—Certainly, if apparent on the pleadings.

1034. Is it not the same thing in the Ecclesiastical Court, though the form of taking advantage of the defect may not be the same?—I do not think it has the same practical effect upon the suitors in courts of equity; if the case stated by a plaintiff is fully met by the defendant he is rarely permitted to amend his hand and make a further case; but in the Ecclesiastical Courts, after promovment's pleading is answered and after issue joined, witnesses examined and publication about to pass, he may then file other articles putting matter within his knowledge at the time of filing his original pleading in issue.

1035. Are you not aware of this, that an amended bill, which is the proceeding you refer to in a court of equity, which I conceive to be analogous to those additional articles in the Ecclesiastical Court, most generally contains matter that was within the knowledge of the plaintiff at the time he filed the original bill?—Yes, but this amended bill, as a matter of course, is not allowed to be filed except within a limited time after answer filed, and if afterwards, upon special application to the court as to material matters, and those amendments are upon matters generally suggested by the answer.

1036. But is it not the fact that the matter of an amended bill is generally suggested by the answer of the defendant himself?—Very frequently.

1037. If the additional articles suggested a totally different case from the original libel, is there any mode by which the impugnant can take advantage, by exception or otherwise, in the Ecclesiastical Court?—I am not sufficiently aware of the practice of the court to answer that question, but I believe the pleading can be objected to by notice and brought before the judge on motion.

1038. You suggested as an improvement in this court, that the court should have the same power as a court of equity in having all parties before it who were interested in any suits connected with the establishment of wills?—I did.

1039. Are you aware that the Ecclesiastical Court has no power whatsoever over the real property devised by the will?—Yes, I am.

1040. Do you mean to suggest that the Ecclesiastical Court should have that power as regards the effect of the instrument, upon real property as well as personal?—Certainly not; I mean merely as to the validity and due execution of the instrument, that this court should have the power of pronouncing upon its due execution.

1041. Are you not aware that that is precisely the effect of the power which the Ecclesiastical Court has at this moment, that as far as concerns personal property the Ecclesiastical Court possesses the sole and exclusive power of establishing the will?—Yes; but the Will may be afterwards contested in a court of law or equity.

1042. Do you mean to say that the proof of the will in the Ecclesiastical Court, as far as personal property is concerned, can be contested in a court of law or a court of equity?—I believe that although probate may be granted of a will, yet that upon trial in a court of law or in a court of equity, the validity and due execution of such will may be contested.

1043. And that in cases concerning personal property merely?—I am not personally aware of such a case.

1044. The Ecclesiastical Court having no power over the real estate of the testator, can you consider it practicable to make all persons who are interested in the will parties in a suit in the Ecclesiastical Court?—I think that to a great extent it can, and that at all events the parties deriving real property under a will should have some tribunal by which they could perpetuate testimony and prove its validity; and besides it would save considerable expense in proof of the execution of wills, in proceedings in courts of law and equity, if in the first instance its validity was pronounced upon by this court.

1045. Are you not aware that the proof of wills, in most instances, is for the

the purpose of obtaining administration where no dispute exists between the parties?—In the vast majority of cases.

1046. Then what practical benefit do you consider would arise from bringing before the court, in cases of that sort, all the parties who may be interested with respect to real property or otherwise under that will?—It is only in cases where a will was disputed that I suggested that all parties should be brought before the court and the validity tried, and not in ordinary cases.

1047. Take the instance of a disputed will; is it your suggestion that the heir-at-law should be brought before the Ecclesiastical Court?—Yes, if the will deprived him of property to which by the law he would be entitled in case no will existed, and also all devisees either taking direct or contingent interests under the will.

1048. You have stated that you are aware that the Ecclesiastical Court has no power of pronouncing any decree affecting the real property of the testator?—Yes.

1049. Then what advantage do you suggest is gained by the heir-at-law in being put to the expense of being made a party in the suit in the Ecclesiastical Court, where he can have no decree in his favour of any sort?—What I mean to convey is, that the will should not be absolutely proved without notice to him; and it is for the purpose of notice, not in order to subject him to the costs and expenses, but that the will should not be proved behind his back.

1050. Are you not aware that the proof of the will behind his back, at present, does not affect him in the slightest degree?—Certainly not, if he means to contest it in another court.

1051. Whether he does or not?—The obtaining of the probate does not affect his rights.

1052. Supposing the case of an ejectment for real property devised by will, and the question is whether the plaintiff is the heir-at-law or not, do you conceive that proof of the will made according to your suggestion in the Ecclesiastical Court ought to bind the parties?—Yes, as to the validity of the instrument itself, if so decided upon by the Ecclesiastical Court.

1053. That is, supposing the plaintiff in that ejectment to have been a party to the proceeding in the Ecclesiastical Court?—Yes; that he should not have afterwards the power of contesting the same instrument.

1054. Supposing this case, that the plaintiff who was a party to the proof of the will in the Ecclesiastical Court turned out not to be the heir-at-law, but was himself challenged by the real heir-at-law, who was not a party in the Ecclesiastical Court, would you hold him bound by the decision of the court respecting the will?—Certainly not; no person that was not a party and privy to the original decision.

1055. Do you see now the extreme difficulty, if not the impracticability of discovering all the persons who should be parties to the proof of that will in the Ecclesiastical Court?—Yes, I am quite aware that it may be impossible to discover all the persons, but so far as they appear from the instrument itself if the will is to be contested, those persons should have notice, and the decision upon it should bind all the parties, but not absent parties, as I before mentioned.

1056. Where the present object of proving the will in the Ecclesiastical Court is merely to give title to administer the assets without affecting the right of any person to those assets, do you consider it necessary to have more than the present parties to that suit as regulated by the present practice of that court?—Certainly, because the rights of the parties in the personal property will be taken away if probate is granted without their knowledge.

1057. State an instance of that?—A will, for instance, may be proved, disposing of personal property, or the greater portion of it, to the prejudice of the next of kin; the executor named may proceed to prove it, and an individual may enter a caveat; by the present practice the caveator and the person proving the will are the only parties; the next of kin, or those to whom small legacies appear to be devised, take no part in the suit; whereas, if they did take a part in the suit, the will might be found to be invalid, and then their distributive shares of the property might amount to a considerable sum.

1058. Do you mean to say that the next of kin receives no notice by the practice of this court before the will is proved?—None whatever, the executor takes probate as a matter of course unless a caveat is entered.

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1059. By what means generally do parties obtain such notice as to enable them to enter a caveat in any case?—Upon the death of a party, the usual manner is, for an individual interested, or who supposes he is interested in the assets of a deceased person, to enter a caveat within 14 days of the death of such party, by which means probate cannot be granted without notice to him by citation; a citation is issued against the caveator.

1060. But that proceeding originates entirely with the caveator, without any notice whatsoever?—Just so.

1061. Would you not consider it a great improvement in the practice, that the next of kin should have notice in all cases before the will was proved?—Certainly, if practicable, but great difficulty would arise, as the next of kin may be in various parts of the world, and the immediate representatives of a deceased person may not be known.

1062. *Chairman.* Are you aware whether any bonds at present are taken and charged for upon procuring marriage licenses?—Yes, bonds are executed upon obtaining marriage licenses, for which the officers of the various diocesan courts, particularly in the Consistory Court of Dublin are entitled to, and receive fees upon the preparation of them.

1063. Has it come to your knowledge, that under these license bonds the right to raise the amount, in case the condition is not performed, has been questioned?—In the first instance, I believe, the bond being only upon a shilling stamp is an objection; and secondly, the right to recover the amount is also considered doubtful.

1064. Has it been questioned?—I have not known any instance where it has been put in suit, but the right to recover has been disputed, and I have known questions upon the subject submitted to counsel.

1065. Does it appear to you that those bonds so passed are a mere idle form?—At present they appear so.

1066. They are of no legal validity?—That is the impression.

1067. Do you not consider that additional protection should be given to parties who may be induced to enter into matrimony, from the very nature of those bonds when given under false pretences?—Most decidedly; I think that the bond should be effectual to all intents and purposes, and that the female, who would be the party really aggrieved by a breach of the condition, should be entitled to an assignment of the bond, and to enforce payment.

1068. Do you happen to have a copy of any bond passed in a case of this description into the Consistorial Court of Dublin?—I have; I will hand it in.

[*The Witness delivered in the same, which was read, as follows:*]

License Bond.

Know all men by these Presents, That We Samuel Cooper, of Abbeyville, county Dublin, Esquire, and Claudius Armstrong of Mount Pelier Parade, county Dublin, Esquire, are holden and firmly bound to the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Dublin, Primate and Metropolitan of Ireland, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to the said Most Reverend Father in God, William Archbishop of Dublin, or his certain attorney, executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves and each of us for the whole, our heirs, executors and administrators, finally by these presents, sealed with our seals, dated the 14th day of June, in the year of our Lord, one thousand eight hundred and twenty-four.

The condition of the above obligation is such, that whereas license is granted to solemnize matrimony between the above-bounden Samuel Cooper and Frances Ann Author of the parish of Mosackstown, spinster. If therefore there appear not any let, suit or impediment, of or by reason of any affinity, consanguinity, pre-contract, or otherwise, that may hinder the said marriage; also if there be not any suit or controversy had, moved or depending before any judge, ecclesiastical or civil, for or concerning the said marriage or contract of either the parties with any other; and further, that the said parties do not proceed to the solemnization of the said marriage without the consent of parents, guardians or tutors (if any they have), be thereto first law and obtained; that then this obligation to be void, or else remain in full force or virtue in law.

Signed, sealed and delivered }
in the presence of }

Samuel Cooper. (L. S.)
C. Armstrong. (L. S.)

1069. Mr. West.] A fiat for the license is granted?—Yes, in the Consistorial Court of Dublin by the judge or his surrogate, and by the vicars-general and their surrogates in the diocesan courts.

1070. Is

1070. Is that fiat granted upon the oath of the party previously taken?—In Dublin it is, and it ought to be in the country; but it is not so strictly enforced.

1071. Is that affidavit in writing or taken *visd voce*?—The party procuring the license does not make an affidavit in writing, but is asked some questions *visd voce*.

1072. Are those answers upon oath?—Yes, he is previously sworn.

1073. Do you conceive that it would be an improvement in the practice to have the terms of the affidavit in writing?—Most decidedly; an affidavit in writing, according to an approved form, should be made by the party in all cases applying for a license, sworn before the proper officer, and filed with the other records of the court for the purpose of being used in prosecutions for perjury, in case the statement be untrue.

1074. *Chairman.*] Does a great difficulty arise in prosecuting for perjury under the present system?—I do not believe a prosecution for perjury could be maintained under the present practice.

1075. Do you happen to have any fiat of the nature you just now alluded to in your possession?—I have a copy of one, as taken from the Consistorial Court of Dublin, which I now hand in.

[*The Witness delivered in the same, which was read, as follows:*]

A license to solemnize matrimony between Samuel Cooper, of Abbeyville, county of Dublin, Esquire, and Frances Ann Arthur, of Monkstown, parish of Monkstown, widow. Sworn this 19th day of June 1824, before me, John Lewis, surrogate.

Jovis, 22^a die Junii, 1837.

MEMBERS PRESENT.

Mr. Villiers Stuart.
Mr. West.

Mr. Lucas.
Mr. Hamilton.

MR. WINSTON BARRON IN THE CHAIR.

The Rev. George Miller, A. D., called in; and Examined.

1076. *Chairman.*] WHAT is your office?—Principal surrogate of the Consistorial and Metropolitan Courts at Armagh.

1077. How many years have you been in that office?—Fifteen.

1078. What may the probable emoluments of your office be?—The emoluments of the office are nearly equally divided between the surrogate and the vicar-general, Dr. Radcliffe; I am the deputy; the vicar-general holds an office in Dublin, and the rule has been to divide every thing except a shilling for the seal; I suppose the total amount of the emoluments of the office is about 190*l.* a year, which I divide with him; I get a little more than he does, for on all instruments on which there is a seal I get a shilling, which is not divided; but the other fees are divided equally between the vicar-general and the principal surrogate.

1079. Your emoluments are somewhat about 100*l.* a year?—Yes, and the vicar-general gets about 90*l.*

1080. Does the vicar-general perform any official duties for his salary in this instance?—The only official duty which I have known him to perform has been attending visitations, both the visitation of the diocese, which is once every year, and the visitation of the province, which is once in three years; he leaves the court and the ordinary jurisdiction to me; in one important case I knew the vicar-general to attend, but it was a case quite out of the ordinary course; it was the case of the late Bishop of Clogher, which I suppose every one remembers, but in no other case did he ever appear in court.

1081. What may be the probable number of causes that are tried in your court in the year, taking an average of the last three years as a criterion, and excluding any title causes that may have arisen within those years?—In the course of about 15 years I have had occasion to decide on 58 cases of some importance; in this I do not include ordinary suits for title, which were very

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numerous at the beginning, but which ceased on account of the composition; of these 58 causes, seven were cases of defamation, three of interim alimony, four of tithe appeals, and one of ecclesiastical discipline; the remaining 43 related to wills or administrations in some way or other; in four cases wills were set aside as fabricated; of the 58 cases, 21 were appeals from the other diocese, so that the original causes were only 37; of the appeals, 14 were from Down and Connor, that is two-thirds of the number, three from Dromore, one from Derry, one (or rather 30 tried as one, for they were all similar), from Kilmore, one from Meath and one from Clogher; I think it fair to add that it may be a sufficient reason for the number from Down and Connor being so considerable, that the united diocese contains a large and industrious population, and two considerable towns, Belfast and Lisburn, on which accounts the quantity of business may be considerably greater.

1082. Are any tithe causes now tried in your court?—No, there have not been for a considerable time.

1083. It is understood that formerly the great bulk of the business consisted in tithe causes?—Certainly; whenever there was not a bargain or arrangement between the parties, it was of necessity a matter for the Ecclesiastical Court.

1084. Can you give the Committee any idea of the average number of tithe causes that were tried in your court annually, when you first presided over it?—No, I am not prepared to answer that question; I cannot do it from memory.

1085. Can you give the Committee any general idea on the subject?—I can only say that the court was generally held once a fortnight, and there was business every court day, with very few exceptions.

1086. Could you, from memory, without referring to your books, say that these causes so occurring every fortnight, amounted to 10, 20 or 30, or any average number?—I should say they did not exceed 10, and perhaps they did not amount to it, for most of the parishes were set; wherever there was a parish set or a bargain made, there was no tithe cause; it was only where no agreement was made between the parties that they came to an ecclesiastical court for decision; therefore I am sure they did not amount to 10. In the case with respect to which I mentioned that there were 30 tried as one, it was an appeal from the diocese of Kilmore, and it was a combination; there were 31 causes, and the trick which was attempted to be played was curious; the 31 had been tried as one in the diocese of Kilmore, and in the appeal they left out that one in which the evidence had been produced, and brought the other 30 before me, in order that I might reverse the decision for want of evidence. They left out the case in which the trial had been held, and brought forward those in which no evidence had been produced. I was obliged to decide on the assumption that the other court must have had evidence though it was not produced to me, and, perhaps rather in an arbitrary manner, I confirmed the decree, because it was a palpable trick.

1087. The evidence in your courts is always written, is it not?—Yes.

1088. The course of proceeding in the case of appeals is to transmit the evidence to your court from the Diocesan Court from whence the appeal is made, is it not?—Yes.

1089. And in the case to which you allude, there being no evidence taken, of course there was no evidence transmitted in writing to you for your guidance?—No, but it was a palpable fraud; the other cases, it was understood, were to be decided on the same evidence as was given in the first case, in order to save expense to the parties.

1090. You reside in Armagh?—Yes.

1091. What class of professional persons practise now in your court at Armagh?—I should first say what class of persons did practise when I began; when they had tithe business, there was profit sufficient to support qualified persons, and accordingly I had three proctors who were nothing but proctors; but latterly, in order to have persons competent to manage a suit, I have been obliged to make three or four of the local attorneys proctors.

1092. Who has the power of admitting persons to practise in your court?—I have always exercised the power, by the permission of the vicar-general; but, properly speaking, it rests with him.

1093. Is there any rule laid down for their admission, or are you guided by your general knowledge or opinion of the parties?—The parties I know individually;

vidually; they are local attorneys, and I exercise my own discretion with regard to their admission.

1094. They have not been necessarily bound or articulated in any manner to any one in the same profession, in order to render them eligible to be admitted?—No; there is no object sufficiently important for that.

1095. The parties then now practising in the court are understood to be attorneys of the town?—Yes; four whom I have admitted.

1096. Do they pay any fees on their admission?—I am not aware that they do; I rather think they do not; if they pay any thing, it is to the registrar on taking the customary oaths.

1097. Are there any advocates, properly so called, practising in your court, or, as they are called in the common law courts, barristers?—No, the court is not considerable enough for that; but I have had advocates of the first eminence, as civilians, pleading before me; on about six occasions, I have had all the principal civilians in Dublin.

1098. That is in the course of 15 years?—Yes.

1099. Does your court claim to have what is called peculiar jurisdiction?—No, it is the regular Consistorial Court of the diocese and Metropolitan Court of the province; there is a peculiar jurisdiction within the arch diocese which claims independence, but we do not acknowledge it; it claims it, and in fact enjoys it; that is the lordship of Newry, belonging to Lord Kilmorrey.

1100. You are, perhaps, aware that there are several cases of what are called peculiar jurisdictions in England, and Newry is the only one in all Ireland that claims that?—The only one in the northern province.

1101. Newry has not actually established its claim, at least it is not acknowledged by your court?—In the commencement of my office, I was directed by Dr. Radcliffe not to do any act that should recognize it; but at the same time we enter into no collision with it.

1102. You were not bred to the law yourself?—No, I was bred a theologian; but I must say, I found it no great difficulty to acquire all the knowledge of law that my situation demanded. I could name four works in which I found all the knowledge I conceive necessary, except what might be acquired by habitual practice in the profession, and a knowledge of reported cases, in which, of course, I am deficient.

1103. How many appeals have there been from your decision during the 15 years you have presided in this court?—Four.

1104. And in how many of these cases was your judgment reversed?—In one; but I think it necessary for my own justification to state, that in that case my superior, Dr. Radcliffe, concurred with me, and therefore I may be permitted to think that I was right.

1105. In what state did you find the repository for wills and official documents when you took possession of the office?—In a very imperfect state, for we had no regular repository for wills, but we had an office; we now have a very complete repository, which was built at the expense of the present primate.

1106. Have you any knowledge of what the state of the repositories are in the other dioceses under your control?—I have no means of knowing any thing, except what comes before me in the shape of appeals.

1107. What would you say, from your general knowledge, as to the state of security in which those public documents are now held?—I suppose it not to be good from its having been in the principal see, until the liberality of the primate provided a repository.

1108. Your impression is, that these documents are not in the most secure state that they ought to be placed in?—I only infer it from the insecure state in which they were in Armagh before the present primate built a repository; I have no other ground for that inference.

1109. Do you believe, from your general information, that in most of the dioceses there is no fixed place for the conservation of wills or other public documents of that description?—Perhaps I ought to say that there was a circumstance peculiar to the diocese of Armagh, which may have made it worse than others, though it was the principal one in the province; the registrar, when I came into office, was a Mr. Patrickson, who held the office of clerk of the council in Dublin, so that the office of registrar was done by deputy; I suppose it was owing to his having some connexion with the Prerogative Court in Dublin that he got that appointment; there may not have been the same difficulty in

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other places, and therefore the case of Armagh might possibly have been worse than other places; upon his death every thing was made local.

1110. Previous to that time the registrar resided in Dublin?—Yes; and a part of the records were kept in Dublin and part in Armagh.

1111. Is the Committee to understand that it was from the liberality of the present primate that the public have gained the advantage of a safe record repository in Armagh at the present moment?—Certainly.

1112. Was that a free and voluntary act on the part of his grace?—Perfectly.

1113. It was in no way incumbent upon him to provide such a repository?—Certainly not; there was an office for the transaction of business, but there was no repository.

1114. Was there any power, either in you as head of the court, or in your superior, to compel any party to procure such a building to be built for the security of these public documents?—I do not know of any such power.

1115. Or any public fund, out of which the expense of such a building might be defrayed?—No, nor was there any complaint; there was a regular registry office; and the primate built a distinct repository for wills.

1116. Are you aware that in some of the diocesan courts in Ireland, the office or repository for these public documents is frequently changed with the residence of the party who happens to be registrar?—No, I am not aware of it.

1117. Have you any general knowledge of the abilities or information of the practitioners in the other diocesan courts in the metropolitan district of Armagh?—The only Diocesan Court as to which I can give satisfactory answer with regard to that subject is the Court of Down and Connor, and there there is a very regular establishment of proctors; I think there are six mentioned in the Almanack, owing to the quantity of business.

1118. That, as you have already stated, is one of the largest and richest districts in your archdiocese?—It is not in the archdiocese, it is in the province; and I should suppose there is probably more business there than there is in the arch diocese; there are two large towns and a considerable population.

1119. What are the fees which are charged for the inspection of documents, wills, for instance, in the custody of your registrar?—I think it is 2s. 6d. for a mere inspection.

1120. And what for copying?—That must be *ad valorem*, according to the quantity.

1121. And what is the *ad valorem* charge?—The ordinary rates of clerkship, as I understand.

1122. Extracts come under the same head, of course?—Yes.

1123. And what is the rule with regard to searches?—Two shillings and sixpence for a search, I believe.

1124. It is the same as for the inspection?—I believe they go together; if you merely wish to look at a will, you pay 2s. 6d., and if you get a copy, you pay according to the quantity.

1125. Has any instance of a will being lost or mislaid occurred in any of the dioceses over which you preside?—I have no knowledge of that kind with regard to other dioceses; but I am afraid there were many wills lost in Armagh before I came into office, from the frauds which were practised by one of the proctors, and which, if it is important, I can explain.

1126. Is there any control at present exercised in the office to prevent the recurrence of a similar fraud or insecurity?—There is, but I do not know whether they go to that extent; the fraud to which I allude was this: the country people were many of them very ignorant, and they came to him and gave him their wills, which he undertook to manage for them, and he kept the wills, and kept the fees, which should have gone to the proper officers: he kept them in his own house, and made a sort of registry there, and never proceeded to get the probates; as far as I can, I check it, by holding every will till I give it to the proper officer.

1127. Has it ever come to your knowledge that any wills were lost in any other manner than that which you now describe?—I believe not.

1128. Do you conceive that the practice in the diocesan courts of the district is of sufficient magnitude to require the existence of separate courts in each of the dioceses under the control of the arch diocese of Armagh?—If it is considered merely with reference to the employment of professional men, I think not; but if they

they are considered with reference to their influence on the minds of the country people, I think they are.

1129. It would appear from your evidence that the business in some of these dioceses is very small indeed?—I believe it is.

1130. Yours being the principal court in the province, and being a court of appeal besides, must have a much larger proportion of business than the minor dioceses in the province?—I should imagine that the diocese of Down and Connor has more, from the local circumstances.

1131. With that exception, the others must have considerably less, or at least some of them?—Yes, I believe so.

1132. And the business of these courts cannot give employment to professional persons of eminence so as to induce them to give their attention to it?—Local attorneys can always be found to conduct the suits with sufficient skill. They have certain forms to go through which are very soon learned. I do not think that the business of my court would be sufficient to support qualified men, now that they have lost the tithe business. The only inconvenience of employing attorneys is, that they go to Dublin in term time, so that our business is necessarily interrupted; but the quantity is so small that it is not important.

1133. How many times in a year do you sit at present?—Once a fortnight, if any thing is to be done; probably about once in every second fortnight. There are several steps in every trial, and I often have to go to take some one step.

1134. Do you not consider that it would tend to the uniformity of practice to have a number of those diocesan courts removed where there were contested wills or difficulties arising?—I can only judge from the appeals that either come to me or go from me, and I have no reason for thinking that there is any greater diversity of feeling than would necessarily occur among different courts.

1135. Are you aware that there is a prejudice, generally speaking, against contesting matters in these courts?—I believe there is no objection except to their expensiveness. I do not think there is any objection to our proceedings as ecclesiastical, but only as expensive.

1136. Perhaps they are considered rather slow, there being a great many steps to be gone through?—Yes, but those forms are no more than belong to plenary proceedings, and I believe they correspond very nearly with the proceedings of a court of equity in regard to those steps; with regard to us, the question is between plenary and summary jurisdiction.

1137. Does it strike you that it would be an improvement in your court to have the business conducted with *voir dire* evidence?—I think where small values are concerned, it would.

1138. It would tend to lessen expense?—No doubt.

1139. Perhaps it would facilitate business?—Changes of that sort have been made from time to time; for instance, under an Act of Parliament all tithe matters were made summary.

1140. Mr. Villiers Stuart.] Will you state why you think it would be an improvement in small matters only?—That depends on the question of appeal. In our present appeals the written evidence is transmitted, and if we had no written evidence, it would be necessary to send all the witnesses to the higher court; therefore it might be worth while to forego that advantage in small matters for the sake of saving expense; but in greater matters, where it is important to keep the appeal open, written evidence is useful.

1141. Chairman.] You are aware that the same objection would be against the civil courts, the inferior courts in Ireland, where the barristers preside?—Yes.

1142. And where there is an appeal to the going judge of assize?—Yes, but our appeal lies to the Court of Delegates in Dublin. The diocesan courts appeal to me, and from me the appeal lies to the Court of Delegates.

1143. Mr. Villiers Stuart.] Would it not be better worth while to summon witnesses to your court in a case of some importance, than in a case in which a small matter only is involved?—In a late trial on a question concerning the fabrication of a will, the witnesses were not fewer than 60 in number. I am not quite sure whether, on account of the cross-examinations, there were not 70.

1144. Does not the necessity which now exists of having so many witnesses examined in your court partly arise from your having recourse to written evidence?—No, I conceive not. In the particular case to which I allude, it grew out of the nature of the evidence, which was circumstantial, and which alone could

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be brought to bear upon the case. There was a formal will written, witnessed and sworn to, and it could only be set aside by circumstantial evidence. It was set aside, and my decision was confirmed by the delegates. There was also a trial of discipline which I held lately, and there could not have been fewer than 50 witnesses, who were all, except one, to be brought from Drogheda, and we sent a commission to Drogheda to examine them, to save that expense.

1145. *Chairman.*] Do you not think that the same objection would lie against appeals in all other cases as that which you have now stated with regard to the number of witnesses?—Not if it was made local; for instance, if it was the assistant barrister, or going judge of assize, the same witnesses might, in almost all cases, be brought forward without inconvenience.

1146. And do you see any tangible objection to having the appeals made in such matters to the going judge of assize, where we know matters of much greater importance and much larger amount are tried than are tried in your courts?—I do not see any objection to it, and in that case the necessity for written evidence would, I think, be done away with.

1147. In point of fact, is not the appeal from your court to a portion of the going judges of assize in Dublin called the Court of Delegates?—The chancellor is authorized to commission five persons to hear the appeal; but the practice is to appoint a puisne judge from each law court and two masters in Chancery.

1148. Do you consider this appeal court, called the Court of Delegates, to be such an excellent court that it would be desirable to continue it as an appeal court from yours?—There can be no doubt of its abundant competency; but I have always understood it to be a reluctant court, and therefore not a very desirable one.

1149. Are you aware that it is a kind of extra-judicial business that they have to transact, or that they consider it so when they are called into the Court of Delegates?—I would not call it extra-judicial, but it is superadded to their own regular duties; it takes them out of their regular course, and I have been told that they dislike it, and therefore do it unsatisfactorily.

1150. Have you been informed that this court is often very difficult to get together in sufficient numbers, where there is a press of business in their own courts, to try matters of appeal?—There is a secretary, whose business it is to get them together, and he does so; I believe they always appoint either a day before or after the term for business of that sort, when they can, that it may interfere as little as possible with their own ordinary business; the court is held just before the commencement of the term, or just after its close.

1151. Do they commence their sittings at a very late hour of the day?—I believe they do; at three o'clock, so I have been told.

1152. Have you been informed or do you believe that it is usual for them to adjourn between four and five, and not to sit for more than an hour, or from that to two hours at most?—I never knew them adjourn above once, except in one case, and that was a case of a forged will; I understood they sat five times about that.

1153. How many hours did each sitting occupy?—I suppose they sat from three to half-past five; but all that I have by report.

1154. In any of the other ordinary courts they would have sat from ten till four or five in case of necessity?—In the same case, I sat for six hours without intermission, not having any thing else to do; it was equally urgent.

1155. In the ordinary course, courts do not adjourn after a two hours' sitting, do they?—My own court is very often occupied not half an hour.

1156. When there is a question before a court, is it the custom, is it not, to sit more than two hours in a day?—I suppose it is.

1157. The necessary consequence of these short sittings is, that the expense of these courts is considerably increased to the parties concerned in their proceedings, is it not?—But I must beg to observe, that I do not know of any inconvenience experienced, except it may be in the one case I have already mentioned, and that grew out of the difficulty of the case. The judge who took an active part in it was the late Sir William Smith, and he could hardly bring himself to believe that so many people had perjured themselves, and there was a moral hesitation in coming to the conclusion, which caused the postponement in that particular case. I had a local knowledge, and made up my mind about it, but the judges who sat in the Court of Appeal found it difficult to persuade themselves that there was so much perjury in the case. I am not aware of any inconvenient postponement having occurred except in that case, and in that case it is accounted for in that way;

way; it was owing to the moral reluctance which they felt to coming to the conclusion at which they arrived.

1158. Could you suggest to the Committee any improvement in the present system of pleading, supposing it should be desirable that pleading by written documents should be continued?—I am not competent to point out any improvement, or any other change, except in the choice between plenary and summary proceedings.

1159. You have stated that your sittings now average about one in a month?—Yes.

1160. Could you give any idea what the length of each sitting might be?—They seldom exceed an hour; we have a number of preparatory steps before a cause comes to a hearing. Whenever a cause comes on for a hearing, it occupies a considerable part of a morning, and sometimes a whole day; but in the preparatory steps leading to the hearing, it is done as a matter of form.

1161. Mr. West.] Before the Composition Acts came into operation, do you know how many branches of jurisdiction the Consistorial Court had?—There were seven.

1162. Will you be good enough to state what they were?—Tithe questions, probate of wills, administrations, nullity of marriage, divorce, defamation and discipline of clergy.

1163. Their jurisdiction with respect to tithe has been taken away, has it not?—Yes.

1164. If your jurisdiction with respect to wills was taken away, are there not some subjects remaining that would still make such a court as this necessary?—I think so; there would still remain questions of marriage, divorces, defamation and clerical discipline.

1165. Now, suppose they were all taken away except the last, clerical discipline, can you imagine any other mode in which that could be exercised than by a Consistorial Court?—I can.

1166. How?—By the visitatorial right of the bishop.

1167. But still that jurisdiction must remain in the bishop to be exercised in some way as long as there are bishops?—I conceive that he would cease to be a bishop if he had not a visitatorial right; I conceive that every bishop has a twofold jurisdiction of discipline, one which he exercises through the medium of his Consistorial Court by a judge appointed by him, and the other which he exercises in his own person as visitor, and he may choose either of these. In the late question of discipline which I tried, the matter was referred to me rather than tried in the visitation of the diocese, because there were a great many complaints and a great many witnesses, I am sure there must have been 50; but the primate might have tried it himself at the visitation, or he might have held a special visitation; there would, however, be this difference, that he, as a visitor, is tied by no law; there is no appeal; what a visitor does within his jurisdiction, I believe, is not subject to the revision of any court, it is considered as a parental jurisdiction. To take away the consistorial authority of a bishop, in regard to discipline, would be to throw him upon the exercise of his visitatorial right, in which he is perfectly arbitrary, but in the other case there is an appeal.

1168. With respect to the jurisdiction as regards wills and administrations, in case of an executor proving a will, as it not a mere matter of form, merely the administration of an oath?—Yes; but it may become a subject of contention in a court, if the party be required to prove the same will in solemn form of law; in the ordinary case it is a matter of routine.

1169. But in the case of disputed wills, and in all cases of administration with a will annexed, where the executor renounces, do you not consider that that act requires some discretion in the officer who is to discharge it?—In all cases of administration, I think there is a discretion to be exercised, but not in the case of probate of wills by executors; in all cases of administration, whether with or without a will annexed, there is a discretion to be exercised.

1170. A discretion beyond what you think would be supplied by a common clerk?—I think so.

1171. For what reason?—There is frequently a collision of interest between the widow and the children; if the widow be young, she is likely to marry again, and then the administration would go to her husband; if the widow be old, the children are very apt to take advantage of her, and in that case, I give the administration to the widow as long as she is efficient, if she is not too old. The

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discretion allowed to a judge in regard to administration is twofold; he is required by an Act of Parliament to make his election between the widow and some of the next of kin; but if the children, or any of them, be minors, he can go out of the statute by making a temporary appointment during their minority, and that I have generally practised; that is said to be out of the statute, and then I may choose who I please; I have generally preferred granting an administration during minority, first of all, because it left me free to choose whom I pleased; it protected the minors, and I may add, that it was a temporary appointment which might be overhauled, while another administration is irrevocable.

1172. Have you met with any cases in which it has been necessary to have a prompt decision, requiring a good deal of discretion?—I have.

1173. Do you recollect any cases of that sort?—I do; there was a case occurred very lately to me which I will mention to the Committee: I received a letter from the curate of Tanderagee, whom I did not know, but who wrote to me as a clergyman, stating that a shopkeeper who had property to the value of about 400*l.* had just died there, leaving some young children intestate, and that the relatives were possessing themselves of the property, which consisted of goods, he having been a shopkeeper. By course of law, I ought to have waited 14 days before I granted administration, but I exercised a discretion which is allowed, by giving an immediate administration to that clergyman and a physician of the place, on behalf of the younger children; and by that means their interests were protected.

1174. Do you recollect the case of a man named M'Ilroy, who came from America?—I do.

1175. Will you mention it, if you please?—He came from Montreal, having property, I suppose, to the amount of about 1,000*l.*; he was in bad health, and came to reside with a married sister, in whose house, after some months, he died of a consumption. After his death a will was found, of which they had previously known nothing, bequeathing, I think, six several legacies of 100*l.* each to people in Montreal. The family had reckoned upon succeeding to his property, which, in their view, was considerable; they were very much disappointed at this, and endeavoured to suppress the will; but a Presbyterian minister who was present, and was named executor without any concurrence on his part, told me of it; he was not willing to act in it, perhaps from the apprehension of giving offence, and I ventured to do what I had not a strict right to, for I called the parties before me, though there was no cause pending, and examined them; the consequence of which was, that I got possession of the will, and it was afterwards proved.

1176. And the rights of these Americans protected?—They were protected.

1177. Do you conceive that that protection and that justice to parties could have been afforded, if a local jurisdiction, such as you possess, did not exist?—I am very certain that it could not.

1178. You have given the Committee already the number of cases that have occurred within a given time; can you give any statement as to the values for which administrations have been granted?—Yes, I can. I procured from the deputy registrar, and now produce, a return of the value sworn to in probates and administrations for three years.

[The Witness delivered in a Return, which was read, as follows:]

CONSIDERIAL COURT OF ARMAUGH.

TOTAL NUMBER of Probates and Administrations.	Number in which the Property was under £ 30.	Number in which Property exceeded £ 30, and under £ 50	Number in which Property exceeded £ 50, and under £ 100.	Number in which Property exceeded £ 100
For the year 1834 - 35	22	10	9	47
" 1835 - 1836	33	13	24	38
" 1836 - 1837	24	8	23	55

1179. For what purpose are administrations taken out, when the value of the property is under 10*l.*?—Most frequently for the purpose of establishing what is termed a tenant-right; but sometimes for the purpose of enabling the party to recover

recover payment of a note, and very often to enable him to get money out of the savings bank. There is no man in our part of the country who would not get 10*l.* an acre for his tenant-right, without any lease, supposing him to pay the full rent. He would get 10*l.* an acre from any man to stand in his place.

1180. In the list which you have given in, is the year calculated according to the same periods as the former years that you spoke of in your returns?—No, in my own book, which is a memorandum of settlement between me and my principal, I take the year as beginning on the 18th of March, and the registrar began his account on the 1st of January.

1181. Could you give us any proposition of your own for what you would consider an improvement of the present system, with respect to these Consistorial courts?—I think I could. I believe there is no other objection made to our own court of Armagh than to the expense of it. I think the diocesan courts might be improved by being assimilated to our court. I think every bishop might be required to do what the primate necessarily does, that is, to appoint a civilian his vicar-general, having a clergyman like me for the surrogate. The primate does it, because his vicar-general is judge of the Prerogative Court in Dublin; and some of the bishops do the same. I know it is so in Clogher and in Meath, and it may be so in others; but I would make it general.

1182. Where would you fix the residence of the vicar-general?—In Dublin. The advantage of that would be an advantage that I have experienced several times, an opportunity which the surrogate would have of conferring with his principal, and of getting a direction from him in matters of difficulty, which I have perhaps half a dozen times troubled Dr. Radcliffe about.

1183. Would you have the surrogate live in the country?—I would have him live near the bishop; the vicar-general should be a civilian, living in Dublin, capable of directing the surrogate in matters out of the ordinary course.

1184. In cases of small values, do you think an improvement would be effected by making the proceedings in all those cases summary?—I do, provided the appeal were changed, and it was no longer an appeal to the delegates in Dublin, but a local appeal, either to the assistant barristers or to the judge of assize.

1185. Have you got a list of your fees upon probates?—I can state them: the total sum in English currency is 3*l.* 19*s.* 4½*d.* for either probate or administration, but with an additional charge when the wills are long; they get a copy of the will in the probate, and if it be at length, there must be some additional charge made for it; where administrations are under 5*l.* we charge nothing, and for matters between 10*l.* and 5*l.* I introduced a regulation that the fees should be halved, and above that we charge the whole; we have often contemplated altering the fees, and were hindered from doing it by not being able to raise them on the higher sums; we could lower them on the lower sums, but could not raise them on the higher ones; I have got a table prepared, giving a rateable scale of that sort, which, if adopted, would very materially benefit the public; it would lower the total amount of the fees, but that we were willing to submit to; I think it would be a very desirable improvement, for I have often felt that the fees were too high.

1186. Will you state of what the 3*l.* 19*s.* 4½*d.* is made up?—It is made up in Irish money; to the judge, 1*l.*; the seal, 1*s.*; registrar, 1*l.*; apparitor, 1*s.*; registrar, for ingrossing will, if short, 6*s.* 8*d.*; registrar, for exhibit of seal, 4*s.* 10*d.*; registrar, for certificate to stamp-office, 6*s.* 8*d.*; registrar, for entering will, 6*s.* 8*d.*; proctor, for preparing schedule, 6*s.* 8*d.*; proctor, for drawing fiat, 3*s.* 4*d.*; proctor, for extracting, 6*s.* 8*d.*; registrar's clerk, 2*s.* 6*d.*, making in the old currency 4*l.* 6*s.*, and in the new currency 3*l.* 19*s.* 4½*d.* Now, whatever may be thought of the particular charges, my own impression is, that the only person who is overpaid is the registrar, who certainly makes a good deal more by the transaction than any body else. The average of the registrar's fees for three years, 1834, 1835 and 1836, I find to be no less a sum than 586*l.* 19*s.* per annum. The sum I received during that time was rather under 100*l.* The proctors, I really think, are badly paid. Some of the particulars may be nonsensical and unnecessary; but the total amount only appears to me to be a grievance. In the case of the registrar, I think he is overpaid; but as to the others, I think they are barely paid. The deputy registrar gave me a scale of reduction and of increase, and by that, as he informed me, the average amount of the registrar's fees would be diminished to 367*l.* 2*s.* 6*d.* He ought to be paid more than I am paid, because it is

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his occupation. It is not my occupation, but only an incidental matter. I think, however, that he is overpaid, and the consequence is, that we very often put a rider or partner upon him. It is more convenient, however, for me to receive 100*l.* a year for the occasional attention I give, than for him to receive 300*l.* for giving his whole attention to it: to me it is rather an amusement than an occupation.

1187. What would you consider a fair compensation to him?—If he got about 300*l.* a year, I think he would be very well paid.

1188. Would you consider that a fair remuneration for the duties of the office?—I think a qualified man might be got for that.

1189. You say there were four appeals from you to the Court of Delegates during 15 years?—Yes; an appeal is in almost every instance put in.

1190. There can be no appeal direct from the Diocesan Court to the Court of Delegates?—No; they must come to me first.

1191. In the whole of that period there were only four appeals from the province that were prosecuted?—Certainly.

1192. *Chairman.*] Is there any other point that suggests itself to you in the way of improvement of these courts, or any thing that would be useful to the Committee to guide them in their future arrangements?—None but those I have mentioned.

APPENDIX.

To the SELECT COMMITTEE appointed to inquire into the state of the PREROGATIVE and ECCLESIASTICAL COURTS in IRELAND, and to consider the REPORTS of the COMMISSIONERS appointed to inquire into the state of those COURTS in 1826 and 1830:

The MEMORIAL of the PROCTORS of the PREROGATIVE COURT in Ireland,

SHREWETH,

That your Memorialists, practising Proctors of the Prerogative Court in Ireland, beg leave respectfully to submit to the Committee the result of their joint observations on the 19th Report of the above-mentioned Commissioners, so far as the opinions therein expressed may appear to affect the rights and interests of Memorialists.

That certain alterations in the established practice and amount of the Proctors' fees are proposed in said Report, which if carried into execution will have the effect, as your Memorialists are persuaded and submit, of unduly depressing your Memorialists' profession, and of thereby seriously prejudicing the public service in this department of business.

That your Memorialists by no means consider that any private hardship or inconvenience, likely to press upon themselves as a body, would constitute a justifiable objection on their behalf, against any measure tending to the public advantage; but your Memorialists trust that they will be able to prove that their own interests and those of the public are, in this respect, the same, and that the proposed changes tend no less directly to introduce a general inconvenience, than to entail ruin on individuals.

That your Memorialists have a two-fold professional character: first, as conductors of litigated causes in the Ecclesiastical Court; in which respect Memorialists may be compared to Solicitors in the Courts of Equity; and, secondly, as appointed under the Judge, in the execution of that part of his functions belonging to what is called the Voluntary Jurisdiction.

That the voluntary jurisdiction is so named, in contra-distinction to the contentious jurisdiction, or court business; the latter term describing suits carried on between party and party—the former comprehending all ministerial acts despatched in the offices, in the common course of business, without the institution of a suit.

That Memorialists, in their capacity of conductors of Ecclesiastical suits, hold, and are entitled to hold, a respectable station; but this part of their duties is not the most important, nor that which more particularly calls for the attention of the Committee, in taking into consideration the wisdom of the proposed innovations.

That the voluntary jurisdiction includes the department of the granting and expediting of Probates and Administrations, and therefore comprehends what, in a public sense, your Memorialists will not hesitate to term a trust of the highest and most important nature; for what can be more important than those official acts of the Ecclesiastical Judge which constitute, and for ages have constituted, the great channel of conveyance, by which alone, personal property is transmitted to the representatives of parties deceased?

That in practice, an inconsiderable portion of the responsibility annexed to this important trust is, and must be, confided to the Proctor.

That your Memorialists can easily convince your Honourable Committee, by the evidence of facts, and by many obvious considerations, that, in the business of extractions, *i. e.*, of the expediting of Probates and Administrations, there is a constant and indispensable trust reposed in the Proctor, so delicate in its nature, as not to be safely confided to any but individuals of respectability, education and unimpeached integrity.

That the most considerable source of profit to a Proctor is derived from the fees payable on such extractions of Probates and Administrations.

That the immediate consequence of carrying into effect the recommendations contained in the 19th Report would be, to lower the average amount of profit, on this branch of business, to the level of some of the worst-paid employments.

That your Memorialists in all humility submit, that it is not for the interest of the public that your Memorialists' profession should be so degraded; and your Memorialists cannot persuade themselves that the Commissioners of Inquiry would have recommended changes so wholly subversive of the ancient footing of respectability on which Memorialists and their predecessors have stood, had they fully comprehended the extent of the measures they proposed.

That your Memorialists' fees on Probates and Administrations are at present regulated by a table introduced, printed and established in the year 1812, with the sanction and by the allowance of the late Judge of the Prerogative Court in Ireland, the Right hon. Patrick Duggan.

That Memorialists cannot conceal their surprise at finding in the 19th Report an intimation advanced to the effect, that this table of fees of the year 1812 had not the

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Appendix.

sanction or allowance of the learned Judge, but is in fact little better than a surreptitious instrument obtained on the public, by means of a corrupt collusion between a few interested practitioners.

That it is impossible to imagine a more erroneous or unfounded surmise, your Memorialists being well able to demonstrate that the Irish scale of 1812 was most expressly approved by Dr. Duigenan, and then was, and now is, in accordance with the practice of the Prerogative Court of Canterbury, from which practice it has been almost literally transferred to the Irish Prerogative Court.

That the scale of fees, as it now obtains in both countries (with some slight modifications in adapting it to the official fees in Ireland), was first introduced at Doctors' Commons in the time of Sir William Wynne, by the sanction and allowance of that eminent Judge, in proof of which your Memorialists crave leave to refer to an official Report of the Deputy-registrars of the Prerogative Court at Doctors' Commons, prefacing a return made by them to the House of Commons, on the 31st of May, in the year 1825, of the fees established in this department of business, in which your Honourable Committee will find the words following prefixed to the scale of fees there-under-written:—*"That, in the year 1801, a great increase of stamps having been imposed upon Probates and Administrations, on property amounting to £.100,000., a rate of charges was prepared by the Proctors, and submitted to the consideration of the Right hon. Sir William Wynne, the late Judge of the said Court, who did not state any objection thereto, and the principle therein laid down has ever since been acted upon. That, in the month of July last, we received a letter from the Right honourable Sir John Nicholl, the present Judge of the said Court, directing us to report to him how the charges made by the Proctors in passing Probates and Administrations were regulated, and whether there was any table of fees relating thereto, at what time the same was formed, and by what authority it had been sanctioned, and whether we were of opinion any and what alteration ought to be made therein. That, in obedience to such letter, we made our Report, when the Right honourable the Judge, by letter dated 18th February last, was pleased to state, that as the said charges were regulated by a table of fees submitted to his predecessor, the late Sir William Wynne, in the year 1801, and as he did not object to the rate of charges therein contained, which rate of charges had been continued to be made during a period exceeding 20 years, and had been acquiesced in, so far as he had been informed, he did not feel himself called upon to suggest any alteration in the charges, except as to any charge upon the rateable stamp-duty imposed upon Probates and Administrations since the said year 1801; and he concurred with us in thinking that the rate of Proctors' charges should not increase in cases beyond the amount of £.100,000."*

"The stamp-duty now extends to property amounting in value to the sum of one million, £.1,000,000."

"We beg to present and lay before the Honourable House the rate of fees as now charged by Proctors in Doctors' Commons on passing Probates and Administrations."

*"Doctors' Commons,
31 May 1825."*

NATHANIEL GOSLING, }
GEORGE JENNER, } Deputy Registrars.
CHARLES DYNELLY, }

(Vide Parliamentary Paper, 31 May 1825, No. 264.)

That there are not wanting (as your Memorialists humbly submit) many weighty considerations proving the reasonableness of the principle governing the Proctors' charges, as introduced by the English scale of 1801, and the Irish scale of 1812, especially the poundage fee on the amount of stamp-duty.

That in England a series of Stamp Acts, originating in the year 1694, gradually enhanced the amount of duties imposed on Probates and Administrations: in the progress of this augmentation, the practitioners at Doctors' Commons being in the constant habit of advancing the sums disbursed for stamps, have been used from a very early period to receive a recompense in the shape of a poundage fee on the amount of stamp-duty,—a reasonable mode of payment, as the charge has reference to the risk and burthen of making large pecuniary advances, and, of course, holding still a considerable capital in hand. The poundage fee was established at the rate of 3s. 4d. for every pound of stamp-duty. In the year 1797, the stamp-duty in England was brought up to the amount of 60*l.*, in all cases where the personal property exceeded 1,000*l.* In the year 1801, additional stamp-duties were imposed upon a scale which brought the highest stamp-duty to the sum of 1,000*l.*; the Proctor was obliged to restrict his advance, in all ordinary cases, to the former sum of 60*l.*, holding himself, however, ready to advance, and in fact actually advancing in cases which required it, any higher amount that might be necessary in an individual case, for which purpose the Proctor is always obliged to keep a large unemployed capital. Such higher advances being of rare occurrence, so that, for the most part, the Proctor's risk and responsibility, as connected with the stamp-duty, extends no further than as regarded the due application of the money, a smaller and very trifling rate of addition was made to the charge for extracting Probates or Letters of Administration upon the excess of duty beyond 60*l.*, and this charge, amounting to 6*d.*, only, in the pound, is justified upon the ground of the additional risk and responsibility.

Such was the origin and progress of the poundage fee in England. In Ireland, by the Stamp Act of 1807, stamps on Probates and Administrations which had been theretofore comparatively light, varying from 10*s.* to 10*l.*, the then highest rate, were at once placed upon the same high scale as the English duties. Memorialists thus became suddenly and all at once exposed to the full extent of that responsibility which had theretofore been felt by the English Proctor only, and had in that country long before given rise to the poundage

poindage fee. Holding in their hands sums of money, in many instances amounting to thousands of pounds, whilst procuring Probates and Administrations for their clients, and again, in many cases, subject to the risk attendant on making large advances from their own funds, your Memorialists felt they had become entitled to new and additional recompenses under these new circumstances, and they accordingly turned their inquiries to the practice of the Courts in England. The result was, that upon a minute and cautious investigation, conducted by the then Judge himself in person, upon the spot, his Honour, the late Dr. Duigenan, was pleased to assimilate the practice of his Court to that which had obtained at Doctors' Commons, and to publish and allow the table of 1812.

When your Memorialists review the proofs in their hands of the correctness of the above statement, and when further they collate the Irish table of fees with that established in England in 1801, and by such comparison observe that the one is nearly a transcript of the other; when, again, they take into consideration that the English scale remains to this day the public accredited standard of legal charges by the profession in the province of Canterbury, that it has been officially recognized and confirmed by Sir John Nicholl, the present Judge, and has even received indirectly the countenance of an Act of Parliament, viz., 10 Geo. 4, chap. 59, sec. 5; when your Memorialists take into consideration these facts, and then turn back their attention to the 19th Report of the Irish Commissioners, they confess they are lost in surprise at the attempt elaborately pursued throughout that document to disparage the scale of 1812, as a fabricated contrivance, destitute of all original authenticity and legal effect. It is admitted in the Report that that scale was printed and publicly exposed to view in the Registry Office, and in the office of every Proctor; but it is observed by the learned Commissioners, that the order of the Judge does not appear entered in any court-book. Had the habits of those gentlemen led them to any degree of acquaintance with the law or practice of the Spiritual Courts, they would have understood that the proper and legal mode of promulgating laws from authority in those Courts is, by posting a table in certain public places.—(*See Barn's Ecclesiastical Law—Title Fees—page 264.—196th Eng. Civ.—83 Irish Ceq.*) Your Memorialists submit, that in giving publicity to the table of 1812, all legal requisites have been duly complied with.

That apparently by way of justifying that plan of degradation contemplated by the Commissioners, as applying to the profession of your Memorialists, the Report in the 20th folio specifies certain routine duties of your Memorialists' offices as though these contained the sole consideration for the incomes your Memorialists derive from fees.

That it is, however, respectfully submitted, that the Commissioners have not duly appreciated, neither do they seem to have sufficiently understood the duties and details of business, which belong to the practitioners, upon whose interest they are reporting. They overlook the expense of professional education, the decrease in the relative value of money from the year 1718, when a table of fees was established, to the scale of which they desire to bring back the present professional charges, and they treat generally the duties and services of the practitioners, as if they consisted merely in certain common-place business of writing or ingrossing some formal papers, or attending or waiting for a short time at some particular place, for some specific purpose; and if this view of the subject were correct, what they ascribed might not be unreasonable. It should be recollected, however, that by all the present practitioners a large fee has been paid for their apprenticeship; that a five years' service has been dedicated to gain knowledge of their profession, and that, when admitted to practice, they provide an office and a professional establishment of more or less expense, without which their business cannot be carried on. It is a fallacy to assume, as the Commissioners have done, that, in obtaining Probates of Wills or Letters of Administration of the effects of intestates, the services and duties of the Proctor are merely those subordinate duties detailed in folio 20 of the Report; for circumstances constantly arise, in the different cases which present themselves, involving points of professional nicety upon which a well-educated practitioner is alone competent to advise—questions as to the validity or effect of the paper produced as a will—questions as to the party entitled to Probate, or to Letters of Administration, with the will annexed, or otherwise—questions upon codicils and imperfect papers, whether they are proper to be proved or not—questions as to the most convenient and least expensive mode of supplying the evidence necessary for proving papers not complete and perfect, either in form or execution, or having obliterations or erasures—questions, again, as to the party entitled to take out the Letters of Administration to the intestate—questions as to the parties entitled in distribution to the effects—and questions as to the effects which may or may not be subject to Probate or Administration duty; all these points, and many others, arise daily in the course of current business, and the difficulties which they involve demand both labour and intelligence for their solution, not only by the Proctor, but sometimes also by Counsel. It is in these things that the duties of the Proctor much consist; but a remuneration for his trouble and his advice upon these matters is never separately or additionally charged for, and the client is not, except under special circumstances, put to any expense beyond the charge for Probate or Letters of Administration (as the case may be), according to the regulated scale. It is obvious that the duties which have been detailed require persons of trust and intelligence for their performance, and that fraudulent or improper or inefficient advice must be injurious and ruinous in its consequences. Considering then the obvious facility with which fraud might be committed in matters connected with the representation of persons deceased, or in the fraudulent production or alteration or suppression of wills, or codicils or testamentary papers, or other circumstances connected with them, it seems absolutely necessary for the security of the public, that the practitioners who conduct the business in question, should be persons not only of good professional

Appendix.

education, but also of responsibility and trust, and of a station to place them above the influence of unworthy motives; and how are persons of this description to be secured, unless their professional remuneration be suited to their station and condition, and sufficient to place them above the temptations to which indigent men are exposed?

That your Memorialists might easily illustrate the magnitude of the trust devolving on the Proctor by examples of familiar occurrence. It is well known, that under the existing state of the law, the largest personal estate which can be accumulated by a subject may pass under a scrap or scraps of writing however informal or irregular, without a witness or any other medium of proof or publicity, save that of hand-writing. When it is taken into consideration that, in the critical interval of time between the discovery of such papers after the testator's death, and the lodging of them in the public places of deposit, the Proctor becomes the hand which holds them, it is perhaps not too much to say that the person filling that situation ought to be above vulgar temptations, and no less competent, from his integrity, to control undue tendencies in a client, than, by his intelligence, to advise him as to his rights.

Suppose, again, the case where the Proctor takes into his custody a will disposing of thousands of pounds, and consider the risk he incurs; such a will may in many instances be the only evidence of its own existence and contents; suppose the next of kin, or a person otherwise interested in destroying the document, to get access to a clerk and corrupt him, or suppose by some other stratagem he obtains possession of the will, what is the consequence?—inevitable ruin to the Proctor, and, to the party, the destruction of his rights. Here are fatalities, against the occurrence of which the Proctor is in a manner obliged to insure the public; and yet it is proposed, in the 19th Report, to sink this functionary to a level with persons of the meanest education and lowest esteem in society.

Again, the large sums of money which are entrusted to the profession, in procuring Probates and Administrations, in cases where property is considerable, impose a risk and responsibility which amply demands a commensurate remuneration; these sums of money (amounting occasionally to thousands in the week) are frequently and necessarily in the absence of the Proctors themselves (while called from their offices on professional attendances), entrusted to their clerks, for whose honest appropriation thereof they of course are responsible. It is also of daily occurrence that large sums are remitted from the country, by orders on Dublin bankers or private bankers' notes, all of which must be changed into notes of the Bank of Ireland (none others being received at the Stamp Office), before they can be lodged for payment of stamp-duties; this also subjects the practitioner to serious risk, as no loss that he may meet with in making these necessary changes of money could ever be sought to be recovered from his client.

Your Memorialists are prepared to prove, that upon the average of the years 1826, 1827 and 1828 (those assumed by the Report to ground the different calculations therein contained), the entire profits, under the head of "Extractions," would not, upon the new principle recommended by the Commissioners, amount to the sum of 1,800 £ per annum. The number of members composing the profession is now 20, to which will be added, in the course of two years, eight more, who are now completing the terms of their apprenticeship, which will make in the whole 28. Now, supposing the business to be equally divided, this would give each member of the profession something less than 70 £ per year profit on this branch of the business, and which, with at least one-half of the profession, may be calculated as the only certain source of professional emolument.

The proportion, according to the lowest calculation of the emoluments of the Proctors' Office on this head of business, as compared with those arising from the conduct of suits, is that of three parts out of five; if, therefore, the recommendation of the Commissioners of Inquiry was to become a legislative enactment, the profession would be unable to support even their present office establishment, much less expect to earn a bare livelihood.

Having travelled so much at large into the considerations connected with the poundage fee, your Memorialists are compelled to consult the necessary brevity of this statement, by desisting from any further criticism on the minor regulations proposed in the Report; but your Memorialists hope they will be indulged with the opportunity of more fully underbarring their minds to your Honourable Committee, upon the subjects which, in that Report, they humbly conceive, have given them well-founded cause of exception.

Your Memorialists further beg leave to state, that their profession is not at all to be compared (as is stated by the learned Commissioners) to that of Solicitor or Attorney, the profession of Proctor being confined exclusively to one line of business, whilst that of Attorney or Solicitor embraces various sources of employment and profit.

That, in fact and truth, with the exception of Memorialists' fees, the substance of the suggestion of the Commissioners of Inquiry has been, since the Report, adopted by the learned Judge of the Prerogative Court, as least so far as he considered just, necessary and wise, viz. he has thrown open the profession, by permitting the Proctors to take apprentices, instead of its being confined to the Deputy-registrar as formerly; he has limited the practice of pleading to two pleadings, instead of three as before; he has appointed a regular routine for the examiners in causes;—and he has prohibited altogether the practice of charging solicitation fees.

The Practitioners beg leave respectfully to submit, that the general arrangement of the Ecclesiastical Courts in Ireland, upon a plan similar to that which has been suggested in the very able and well considered Report of the Commissioners of Inquiry into the Law and practice of the Ecclesiastical Courts of England (*Parliamentary Paper*, 27th February 1832, No. 195), which has been recommended to be adopted in its fullest extent by a Select Com-

mittee of The House of Commons in the Session of 1833 (*Parliamentary Paper*, 15th August 1833, No. 670), namely, the consolidation of the jurisdiction exercised by the several Diocesan Courts into one Superior Court, would be a measure of great public advantage to Ireland. And they *knowingly contend that not less by the articles of Union between Great Britain and Ireland (a union best to be secured by the identity of the laws and privileges of each), than from considerations of feeling and natural justice, they are entitled to a full equality of rights with their brethren of the same profession in England.* And they humbly expect, from the equity of The House of Commons, that they may not be subjected to any other measure, or any other system of change which shall not, by the wisdom of the Legislature, be adjudged necessary and just, in respect of the English Ecclesiastical Courts, and the practitioners thereof.

Your Memorialists hope therefore they may, without presumption, suggest the possible inconveniences which may arise from prematurely legislating for the Courts in Ireland which are now assimilated to the English Courts, and which ought, as your Memorialists submit, in justice and fairness, to abide the same ultimate arrangement as shall be introduced into the Courts of the Sister Country, for the regulation of which it is expected a Bill will be shortly brought before Parliament.

ATTESTED COPY RULES OF COURT, made by the Right honourable Dr. Rodcliffe, Judge of Prærogative Court in Ireland, in conformity with the Recommendations of the Commissioners of Judicial Inquiry, contained in their 19th Report.

1st May 1830 (as corrected).

Ordered,

1st. THAT in all cases the Court may, upon application made to it, direct security for costs to be given by any or all of the parties who shall reside out of that part of the United Kingdom called Ireland.

2d. That where Letters of Administration are to be granted to one or more persons resident out of the United Kingdom, the administrator's sureties shall always be persons resident in Ireland at the time of their respectively executing the obligations for their respective principals.

3d. That the expense of taking depositions to prove facts confessed in answers or admitted in sets of court, if taken after such confessions or admissions, shall be paid by the party producing the witness, unless the Court shall think fit otherwise to direct.

4th. That when any exhibits are pleaded in supply of proof, the Proctor of the adverse party shall, on the day on which issue is joined on the plea admitted, declare in open Court, or signify in writing to the Proctor exhibiting the pleading, whether he confesses or denies the handwriting as pleaded of such exhibits; and if the handwriting as pleaded of such exhibits be denied, and afterwards proved, the costs occasioned by the proof shall be paid by the party who denied the handwriting, unless the Court shall think fit to direct otherwise.

5th. That in all cases where citations for testimony shall be duly returned, and the person cited shall not then immediately and duly appear, the Court may, on some day on which such citation is returned, pronounce him or her contumacious and in contempt, and may signify the same according to the statute.

6th May 1830.

J. Rodcliffe.

6th July 1830.

Ordered,

That no witness produced and examined in any cause hereafter to be commenced on any special article, shall be afterwards examined on articles additional or otherwise, without special leave of the Judge.

J. Rodcliffe.

5th October 1830.

The Commissioners of Inquiry having reported, that in their opinion it would be advantageous to the public that the Procurators-general should be at liberty to take apprentices, with a view to their subsequent admission as Proctors, under limitations to be prescribed by the Judge, and Mr. John Hawkins having properly and honourably consented to waive (so far as he is beneficially interested) all objections to a change of the present practice long meditated by the Judge, whose opinion coincides with that of the above-mentioned commissioners;

It is therefore, this 5th day of October 1830, Ordered and Ordained,

That after the 30th day of October instant, the six senior Proctors of the Court, being in actual practice at the time and for the whole term next immediately preceding the presentation

sentation of the petitions hereinafter mentioned by them respectively, be at liberty to take apprentices or articulated clerks, with a view to their subsequent admission as Proctors (instead of the Registrars, or his or their deputy, save as hereafter mentioned), until the terms of apprenticeship of the three present apprentices of the Deputy-registrar, Mr. John Hawkins, shall have expired or ended; all said apprentices or articulated clerks so to be taken, as well as the apprentices or articulated clerks permitted from time to time to be taken by virtue of the rules hereafter made, as well as their respective masters, to be subject to the limitations, rules, orders and regulations hereafter mentioned; that is to say,

1st. That no Proctor of less than ten years' standing be permitted at any time hereafter to take an apprentice or articulated clerk, in order to his being admitted a Proctor.

2d. That inasmuch as it is advisable to guard against overstocking the profession, the above-mentioned privilege of Proctors taking apprentices or articulated clerks shall be until the terms of apprenticeship of the three present apprentices of the Deputy-registrar are ended, save as hereafter mentioned, confined to the six senior Proctors as aforesaid, being of the standing aforesaid, and that when all such terms of apprenticeship shall have ended as aforesaid, every Proctor (unless the Court shall in the meantime otherwise by writing order and ordain) who shall at the time of presenting his petition as hereafter mentioned be of ten years' standing at the least, and in actual practice as aforesaid, shall be at liberty to take an apprentice or articulated clerk under these rules.

3d. That no person be permitted to be taken an apprentice or articulated clerk as aforesaid by any Proctor without leave of the Judge for the time being, certified by his signature of approbation at the foot of the petition, which is in every case to be presented to him for leave to take the apprentice or clerk.

4th. That no person be permitted to be articulated or bound to any Proctor who shall at the time of the presentation of the said petition be under the age of fourteen years, such his age to be vouched by certificate of the registry of his baptism, or by affidavit, as the case may warrant and require.

5th. That every such petition must be accompanied by a certificate, signed by two respectable persons at the least, of the good moral conduct and the respectability of the literary acquirements of the person so offered to be articulated or indentured, and that he has not been bound or indentured or articulated to learn any business or profession other than that of a Proctor or Notary.

6th. That the indenture or articles shall in every case bind and oblige the clerk or apprentice to serve his master in the proper business and profession of a Proctor only for the term of seven years at least from the date and execution of the articles or indenture by all the parties thereto.

7th. That in all cases affidavit must be made by a subscribing witness to the execution of the articles or indenture of the due and actual execution thereof by all the parties thereto, within one calendar month next after the date and execution of the articles; such affidavit to be recorded with the deed in the registry of the Court.

8th. That no person hereafter to be articulated or indentured be on any account admitted a Proctor except he shall have actually and *bona fide* served under and in pursuance of the articles or indenture for the full term of seven years at the least as before mentioned, unless he shall have obtained the full and perfect degree of Bachelor of Arts in one of the universities of Dublin, Oxford or Cambridge; which degree, with five years' actual and *bona fide* service under the articles or indenture will be sufficient, instead of seven years' service.

9th. That no one be on any account admitted a Proctor under the age of 21 years, to be vouched as above.—(See 4th.)

10th. That no one hereafter to be articulated or indentured be admitted a Proctor without a competent knowledge of the Latin language.

11th. That if the master of an articulated clerk or apprentice hereafter to be bound or articulated dies before the end of the term of apprenticeship or clerkship, the clerk or apprentice may, with leave of the Judge, on a petition for the purpose first had and signified in writing at the foot thereof as above mentioned, be admitted to serve out the remainder of his term to any Proctor of not less than ten years' standing at the time of presenting the petition, if bound or articulated to a Proctor, and if he shall be apprenticed to the Deputy-registrar, as after mentioned, he may be admitted to serve out the remainder of his term to the Registrar or his deputy, or a Proctor of not less than ten years' standing; and so in like manner may a transfer of the service of the clerk or apprentice be permitted in case of his master's incapacity or other necessary cause, to be allowed by the Judge.

12th. That no Proctor under ten years' standing at the time of presenting his petition, as above prescribed, be permitted to take or have an apprentice or articulated clerk, in order to his admission as a Proctor.

13th. That no person be admitted a Proctor at any time hereafter, who shall not produce to the Judge a certificate, signed by his master, of his actual *bona fide* service to the profession or business of a Proctor, pursuant to the articles or indenture by which he has or shall have been bound; and that he has not been, to the knowledge or belief of his master, articulated or bound to learn any business or profession but that named in the articles or indenture, or as above mentioned, and of his good conduct whilst under his master; such certificate to be countersigned by an Advocate and two Proctors, of ten years' standing at the least; with this qualification, however, that if the certificate be withheld from the clerk or apprentice unreasonably, or not produced from a fatality, he shall be at liberty, if he can do so, to show facts and circumstances sufficient to account satisfactorily for the non-production of such a certificate, which will be considered by the Court.

14th. That

14th. That no Proctor, who shall have liberty to take and shall have taken an apprentice or clerk as aforesaid, be allowed to take a second or other apprentice or article clerk, with a view to his subsequent admission as a Proctor, until the term of the clerk or apprentice so taken shall have ended; but that the taking of a clerk or apprentice, merely to serve out the remainder of his term contained in an indenture or articles entered into between him and another master, according to the provisions of the 11th preceding rule, be not considered the taking of a clerk or apprentice under this present 14th rule or order.

15th. That no clerk or apprentice be permitted to be article or bound to more than one Proctor as his master.

16th. That no Proctor, whether one of the six senior Proctors or others qualified at any time to take any apprentice or article clerk under and by virtue of these rules or orders, who shall be or become partner with another Proctor or Proctors, any one of whom, at or before the time of presenting his petition as aforesaid for leave to take an apprentice or clerk, shall have taken a clerk or apprentice, except under the provisions of the 11th of the foregoing rules, shall have liberty to take an article clerk or apprentice until he shall have *bona fide* ceased finally to be a partner with the Proctor having the clerk or apprentice as aforesaid, during the term for which such clerk or apprentice was article or bound, every such ceasing to be proved by affidavit. It being the true intent and meaning of this present 16th rule or order, that when any one member of a firm shall (except under the 11th preceding rule) have taken a clerk or apprentice, either before or after he has become partner with another Proctor or Proctors, no other member of the firm shall, whilst such partnership endures, have liberty to take a clerk or apprentice with a view to his admission as a Proctor.

17th. That it shall, in every petition for leave to take a clerk or apprentice as aforesaid, be stated whether or not the petitioner has become, or is about to become, partner with any other Proctor or Proctors.

18th. That Mr. John Hawkins be at liberty, when the present number of his three present apprentices shall have been reduced to one, and not sooner, to take an apprentice or article clerk with a view to his being admitted a Proctor, if and although the said John Hawkins shall be then a Deputy-registrar; and that no other article clerk or apprentice be ever afterwards taken by the Registrar or Registrars, or his or their deputy or deputies; such one clerk or apprentice to be, as well as his master, subject to all and every the rules, regulations, conditions and limitations contained in these rules, and every of them, so far as the same can be made applicable and applied to the case of the clerk or apprentice to be hereafter taken by the Deputy-registrar instead of being taken by a Proctor; this privilege of taking one apprentice or article clerk reserved to Mr. Hawkins being agreeable to the equitable construction of former regulations existing before his waiver of objections to the change of the practice.

19th. On the expiration of his term, every apprentice or article clerk is to proceed in every of the said cases to procure his notarial facility in the usual way.

20th. Before the article clerk or apprentice is admitted a Proctor, he must procure the Judge's fiat for the purpose, and cause himself to be presented to the Judge in open Court by two Proctors, each of ten years' standing. The fiat is then to be read in open Court; the legal and usual oaths administered; on the taking whereof the Judge will admit the candidate a Proctor, and assign him a seat in the Court.

The above rules, like all others, to be subject to be added to, revised and altered by the Court, as justice and the public benefit may warrant or require. The present Judge cannot bind his successors, but pledges himself never to admit any person a Proctor who shall not have been an article clerk or indentured apprentice.

J. Rodhiffe.

ORDERS made 5th October 1830.

1st. Where proceedings are carried on *in person confessoire*, witnesses may be produced and sworn before the Judge in his chamber, as well as in open Court, and such production shall be immediately entered and recorded by the Registrar in his book; but the witness or witnesses so produced shall not be repeated to him or their depositions until the expiration of 48 hours from the time of the witness's production, which time is to be recorded by the Registrar.

2d. That the Proctor of a party taking out a citation or other process shall, on the day of its return, be prepared to exhibit his proxy, and to proceed in the cause by taking the first step therein, according to the nature of the proceedings.

3d. That any party who shall have been served with a citation or other process to appear, and who shall appear on the day assigned therein for the appearance, shall be dismissed with costs, unless the party issuing such citation or process shall return the same, and be prepared to proceed in the suit; for which costs the proctor taking out such citation or other process shall be answerable.

4th. That the Proctor appearing for a party cited to appear, shall be prepared with his proxy, and shall exhibit the same on entering such appearance.

5th. That in all cases the Court may extend the time, on reasonable cause shown.

6th. That no Proctor or officer of the Court shall, directly or indirectly, make or cause to be made against or from any party or Proctor, for, on or in order to, or after the extraction of a Probate or Letters of Administration, or other proceeding, whether voluntary or contentious, any claim or charge, in any shape, form or disguise, or on any account or pretence whatsoever,

whatsoever, of any sum or sums of money as and for a bonus or fee, for or on account of solicitation, or otherwise, reward, premium or gratuity, to be given, paid or applied, directly or indirectly, to or for the use, benefit or advantage of any person or persons not being a practitioner or officer of the Court.

It would be well for gentlemen to advert to the Act 54th Geo. III, c. 68, 40y 9, 10.

J. Radcliffe.

23d October 1830.

On consideration of the Report of the Commissioners of Inquiry, so far as the same relates to the after-mentioned fee, and in accordance with the suggestions of Mr. John Hawkins, one of the Deputy-registrars, it is ordered by the Judge, That the fee of 10s. 6d. (present currency), charged for several years last past under the name of "Court-keepers' and Clerks' fees," on decrees without written sentence in interest causes, and which has been applied in improving and defraying expenses of the Court and offices belonging thereto, be no longer received from or charged against any party, or his or her Proctor or Proctress.

J. Radcliffe.

7th December 1830.

Ordered,

That in all causes hereafter to be commenced, no more than one special allegation be admitted without leave of the Judge first had for the purpose.

J. Radcliffe.

Thursday, 3d February 1831.

Ordered by the Court,

That each examiner do retain in his private custody, until he shall cause the same to be returned carefully sealed up to the Court, or delivered to the acting Registrars, or his or their deputy or deputies, all depositions and interrogatories taken by and lodged with such examiner from time to time, whether such depositions and interrogatories be so taken and lodged in town, or on commissions or requisitions; and that no depositions or interrogatories taken by or lodged with an examiner in town be delivered to the Registrar or his deputy until the Court shall by its order permit them to be published.

2d. That no person or officer be permitted to inspect or otherwise to be informed of the contents, substance or effect, in the whole or in part, directly or indirectly, of all or any part of any deposition or interrogatory taken by or lodged with an examiner, in town or on a commission or requisition, until the same shall, by order of the Court, be permitted to be published as aforesaid, except the examiner and the Judge himself.

3d. Ordered, That a rotation be now established between the examiners, whereby, and according to which, the examiners are respectively to undertake the examination of witnesses in causes and proceedings, whether in town or on commissions or requisitions; and that in order thereto, the present examiners be at liberty to furnish to the Judge forthwith a scheme of such rotation for his approval and sanction.

That such scheme, when so sanctioned, be annexed to this order, and afterwards followed and observed, without any departure therefrom, except by the written consent of the examiners, or special order of the Judge, in the particular case wherein he may consider it inconvenient that such rotation shall be observed.

John Radcliffe.

8th February 1831.

Ordered,

That no citation do hereafter issue to appear in a cause for suppression of a will or testamentary paper, until after an affidavit shall have been filed, entitled, "In the goods of the deceased," stating (if there be but one person to be cited) that the deponent is informed and believes, that said will or testamentary paper is in the power or possession of the person to be cited; and (if more than one person is to be cited) that the deponent is informed, and believes, that the will or testamentary paper is in the power or possession of the said persons, naming them (as the case may be), some or one of them, but of which of them particularly the deponent cannot form a belief (if such be the fact).

J. Radcliffe.

12th February 1831.

Ordered,

That the rotation between the examiners be in future by alternate causes, according as there is a negative issue joined in them in the Court; the examination and cross-examination of all the witnesses in the respective causes, whether in Dublin or on commissions or requisitions, to be made by the examiner as commissioner, or otherwise, to whom the cause by the above arrangement shall belong; the name of the allotted examiner to be inserted in the rule-book immediately after the entering the negative contest or joining the issue in each case.

This being agreed on by the examiners is ordered accordingly by the Judge.

John Rodcliffe.

10th March 1832.

Ordered,

That in all cases of opposition to the admission of allegations or pleadings due, and timely notice in writing be given (before the said opposition be set down to be argued) to the pleader's Proctor of the particular grounds whereon such opposition is founded, whether by reason of the insufficiency of the whole allegation or pleading, or of specific articles thereof only, or of both; and that it be not sufficient to give notice that the allegation or pleading, or any articles or article of the same, is insufficient, inept, irrelevant or defective, without in such notice specifying shortly and in substance the grounds of objection to the allegation or pleading or particular articles, in order that the pleader may avoid the delay and expense of an argument of such opposition, by reforming his allegation or pleading, if so advised, on payment of the costs (if any) of the said opposition.

J. Rodcliffe.

29th March 1832.

1st. It is ordered by the Judge, That in cases of administrations to be granted for the sole purpose of substantiating proceedings in Courts of Equity, same may be granted without annexing to the Letters of Administration the wills or testamentary papers of the deceased persons to whose such representation shall be sought.

2d. It is ordered also, That in all cases of extractions of Probate or Letters of Administration, the professional persons extracting the same do plainly and intelligibly distinguish in his or their bills or accounts of the costs, charges and expenses of and in respect thereof, the sums payable and paid as and for the stamp-duty on every such Probate or Letters of Administration from the sum or sums payable to such persons respectively, as and for his and their own fee and fees and those of the Judge and officers, for and in respect of every such extraction.

J. Rodcliffe.

20th August 1833.

Inasmuch as the Crier of the court, Joseph M'Fadden, who received the sum of 1 s. 1 d., late currency, as a fee on the grant of Probates and Letters of Administration to persons sworn before the Judge out of Court, is dead, and inasmuch as the Commissioners of Inquiry recommended that fee (which was commonly considered as paid to him and former criers as the Judge's servants) to be in future discontinued;

It is ordered by the Judge, That the said fee be and is hereby abolished, and shall not be at any time hereafter paid under any name or pretence to any crier or Judge's servant.

5th October 1833.

1st. Ordered, That in case after a final sentence or interlocutory decree having the force and effect of a definitive sentence in writing, pronouncing for the will or intestacy of a deceased person, a new suit being commenced, seeking to draw in question the right of representation to the same deceased person, the party relying on such sentence or decree be at liberty to make defence or opposition to such new proceeding by way of exception, or by set or protest, as he may be advised.

N.B.—This was
verbally notified
in 1831.

2d. Ordered and declared, That it is sufficient, without setting forth the contents of deeds at length, to lodge them in the registry and refer to them as there remaining, and to recite in the pleading the material part only, and that shortly; and that this course be in future strictly followed.

3d. That in all cases of decrees for public edicts against persons absent abroad, and having prior claims to the grant of Administration, they must be served, not only by posting on the Royal Exchange, but also on the agent of the absent party, unless it shall appear by affidavit that such party has no agent in Ireland.

4th. That every affidavit of interest in creditors' suits do, in addition to the statement of their debts and the value of the assets, set forth whether the creditor has the security of any and what other person or persons for such debt.

COURT OF FACULTIES,

30th October 1817.

Ordered, That in future no special licenses or dispensations for marriage be issued, except to the following description of persons:—

- 1st. Peers and Peeresses, and their respective children and grandchildren.
- 2d. Privy Counsellors and their children.
- 3d. Members of Parliament, and persons who have been such, and their respective children.
- 4th. Great Officers of State.
- 5th. Barons and their children.
- 6th. Knights, including Knights Companions of the Bath.
- 7th. Judges, spiritual and temporal, and their children.
- 8th. King's Counsel.
- 9th. Deans of Churches.
- 10th. General Officers and Admirals.
- 11th. State Physicians, and Physician and Surgeon General.
- 12th. Officers of the King's Household.
- 13th. Officers of the Lord Lieutenant's Household; that is to say, the Private Secretary, Chaplains, Aids-de-Camps, the Steward and Comptroller of the Household, the Chamberlain, and Gentleman Usher.
- 14th. Doctors in Divinity.

And it is further ordered, That the above be hung up in a conspicuous place in the Registry.

This Rule made by desire of his Grace the Archbishop of Armagh, Primate, &c.

J. Radcliffe.

Ordered,

That no person, being at the time partner in or in the employment of any bank or branch bank in any town or district in the country, as cashier, secretary or otherwise, be admitted a Public Notary for such district or town, and that all persons seeking the office of Notaries in towns or districts in the country be required, previous to their respective admissions thereto, to subscribe a written engagement not to practise as such Notaries whilst they shall be so partners or employed as above mentioned, in case they shall after their admission become so partners or be employed as above, and that every such engagement be recorded by the registrar with the faculty, and entered in the book to be kept pursuant to the rule of 4th March 1817.

J. Radcliffe.

It is this day (that is to say, the 18th November 1834) Ordered by the Judge,

That every Proctor, who shall procure a citation to be issued forth of this Court, do cause his christian and surname to be plainly and legibly written on the face of such citation, and on the face of every copy to be made thereof, for service, before the same shall be served on the party or parties to be cited, specifying the party for whom he is the Proctor.

That this rule or order do extend to such citations only as shall issue after the 22d day of November instant.

J. Radcliffe.

Ordered by the Judge, the 25th of November 1836,

That in future all grants "*ex parte absentis*" to administrators shall be limited for the use and benefit of _____, now absent from that part of the United Kingdom called Ireland, and resident at _____, and until (or one of them) shall duly apply for and obtain (Probate or Letters of Administration, as the case may be,) to the said deceased, but no longer, further or otherwise.

(A true copy.)

John & M. Hawkins,
Deputy Registrars.

AT a Meeting of the Profession of Proctors, held in the PREROGATIVE COURT on
Thursday the 4th November 1830,

The following RESOLUTIONS were unanimously passed :—

First, THAT we, the undersigned Proctors of the Prerogative Court, have observed with much concern, that certain insinuations have been thrown out as a part of the evidence published in the Appendix to the 19th Report of the Commissioners of Inquiry into the Fees of Courts of Justice in Ireland, tending to criminate the Deputy-registrar of the Prerogative Court, as having pursued improper practices in his office in the business of extracting Probates and Administrations, thereby seeking to gain for himself an unfair advantage over the other Proctors; and we, in consequence, deem it due to the Deputy-registrar, to declare, as we do, collectively and individually, that we have never known or experienced any such unfair or improper practices on the part of the said Deputy-registrar, and we are fully convinced that none such exist or have existed in fact or reality.

Secondly, That the Deputy-registrar has, in our opinion, invariably discharged his public duties with integrity, ability and zeal; and from our experience we are enabled to attest, that the suitors of the Court and the public at large have derived much advantage from the impartial, honest and enlightened manner in which he has conducted the business of his office.

Thirdly, That whatever objection may be supposed to lie against the union of the office of Deputy-registrar with that of Proctor or taxing-officer (on which it is not for us to offer an opinion), we are convinced that no improper practices have ever been employed or tolerated in consequence thereof by the present Deputy-registrar, being decidedly of opinion that his character and practice stand too high to allow of even a supposition that his performance of the several duties of those distinct departments would ever have been permitted by him to clash or interfere in any improper or culpable way.

Fourthly, That we should be wanting in a due expression of our feelings towards the Deputy-registrar on such an occasion, did we not take the opportunity to declare, as we sincerely do, that we hold his character as an officer and as a man in the highest esteem, and that there is no individual of our acquaintance in whose probity, honour and integrity we and each of us would more readily and unhesitatingly repose our entire confidence, either in relation to the transactions of private life, or in relation to his department as an officer of the Court.

*Will^{ts} Tho. Barlow.
Hans Hamilton.
A. Ormsby.
William C. Rogers.
John Moore.
W^m S. Kildale.
Tho. Tilly.
Bereford Worthington.*

*Hen. P. Stark.
John Blewkey.
Henry Radcliff.
Folliot T. Mestyn.
Jos. Haselton.
John South.
John Grier.*

PREROGATIVE COURT, FRIDAY, 5 JUNE 1812.

It was this day ordered by the Judge, that the Scale of Fees on PROBATES and ADMINISTRATIONS used in Doctors' Commons, be certified to as the Rule further Charges, agreeably to which

PROBATES.

	£. 30. and under £. 100.	£. 100.	£. 300.	£. 400.	£. 500.	£. 600.	£. 700.	£. 800.	£. 900.
	10s. Stamp.	£. 1. 10s.	£. 2.	£. 3.	£. 4.	£. 5.	£. 6.	£. 7.	£. 8.
Writing Jurats, &c.	£. 1. 4d.	£. 1. 6d.	£. 1. 8d.	£. 2. 0d.	£. 2. 2d.	£. 2. 4d.	£. 2. 6d.	£. 2. 8d.	£. 3. 0d.
Registering, &c.	- 4 4	- 7 6	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8
Ingraving, Collecting and Entering 2s. 4d. per Sheet, (exclusive of Purchase).	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10
Probate under Seal and Stamp	3 6 -	3 11 -	4 3 6	5 0 6	5 13 6	7 13 6	9 3 6	10 0 6	11 13 6
Extracting same	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8
Register's Clerk and Judge's Servant	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½
£.	3 12 7 ½	5 - 11 ½	5 13 5 ½	6 18 5 ½	8 3 5 ½	9 8 5 ½	10 13 5 ½	11 10 5 ½	12 3 10

	£. 15,000. and under £. 20,000.	£. 25,000.	£. 40,000.	£. 45,000.	£. 50,000.	£. 60,000.	£. 70,000.	£. 80,000.	£. 90,000.
	£. 250.	£. 310.	£. 380.	£. 410.	£. 450.	£. 520.	£. 610.	£. 700.	£. 800.
Writing Jurats, &c.	£. 1. 4d.	£. 1. 6d.	£. 1. 8d.	£. 2. 0d.	£. 2. 2d.	£. 2. 4d.	£. 2. 6d.	£. 2. 8d.	£. 3. 0d.
Registering, &c.	- 3 8	- 7 6	- 7 8	- 7 6	- 7 6	- 7 8	- 7 8	- 7 8	- 7 8
Ingraving, Collecting and Entering 2s. 4d. per Sheet, (exclusive of Purchase).	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10	- 11 10
Probate under Seal and Stamp	399 11 6	355 1 10	410 12 0	468 3 -	521 13 4	621 11 10	739 43 -	843 13 0	958 16 4
Extracting same	- 12 4	- 13 4	- 12 4	- 13 4	- 13 4	- 13 4	- 13 4	- 13 4	- 13 4
Register's Clerk and Judge's Servant	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½
£.	399 8 11 ½	355 10 5 ½	410 9 3 ½	467 19 7 ½	521 9 11 ½	621 8 5 ½	739 9 7 ½	843 10 2 ½	958 3 11 ½

If sworn by Commission, the first Charge
 Put for Commission and Appearance - - - - -
 Commission under Seal and Stamp - - - - -
 Returning Commission - - - - -

ADMINISTRATIONS

	£. 30. and under £. 100.	£. 100.	£. 300.	£. 400.	£. 500.	£. 600.	£. 700.	£. 800.	£. 900.
	Stamp, 10s.	£. 1. 10s.	£. 2.	£. 3.	£. 4.	£. 5.	£. 6.	£. 7.	£. 8.
Writing, &c.	£. 1. 4d.	£. 1. 6d.	£. 1. 8d.	£. 2. 0d.	£. 2. 2d.	£. 2. 4d.	£. 2. 6d.	£. 2. 8d.	£. 3. 0d.
Oath and Attendance	- 7 4	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3
Stamp on Bond	- 4 4	- 7 6	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8
Administration under Seal and Stamp	11 9	12 6	14 0	15 3	16 6	18 0	19 3	20 6	21 9
Extracting same	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8	- 0 8
Register's Clerk and Judge's Servant	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½
£.	4 6 1 ½	5 13 9 ½	6 8 2 ½	7 13 2 ½	8 18 3 ½	9 8 3 ½	10 13 3 ½	11 10 3 ½	12 3 10

	£. 15,000. and under £. 20,000.	£. 25,000.	£. 40,000.	£. 45,000.	£. 50,000.	£. 60,000.	£. 70,000.	£. 80,000.	£. 90,000.
	£. 250.	£. 310.	£. 380.	£. 410.	£. 450.	£. 520.	£. 610.	£. 700.	£. 800.
Writing, &c.	£. 1. 4d.	£. 1. 6d.	£. 1. 8d.	£. 2. 0d.	£. 2. 2d.	£. 2. 4d.	£. 2. 6d.	£. 2. 8d.	£. 3. 0d.
Oath and Attendance	- 7 4	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3	- 10 3
Stamp on Bond	- 4 4	- 7 6	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8	- 7 8
Administration under Seal and Stamp	11 9	12 6	14 0	15 3	16 6	18 0	19 3	20 6	21 9
Extracting same	- 12 4	- 13 4	- 12 4	- 13 4	- 13 4	- 13 4	- 13 4	- 13 4	- 13 4
Register's Clerk and Judge's Servant	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½	- 3 9 ½
£.	399 8 11 ½	355 10 5 ½	410 9 3 ½	467 19 7 ½	521 9 11 ½	621 8 5 ½	739 9 7 ½	843 10 2 ½	958 3 11 ½

If sworn by Commission, the two first Charges added.

PREROGATIVE COURT, FRIDAY, 5 JUNE 1812.

by the Right honorable Sir William Scott, and now judged with the Registrar, shall be adopted and made use of by the Prætor of this Court
Under the following Charges are to be made:

PROBATES.

£. 1,000.	£. 1,500.	£. 2,000.	£. 2,500.	£. 3,000.	£. 3,500.	£. 4,000.	£. 4,500.	£. 5,000.	£. 5,500.	£. 6,000.	£. 6,500.
£. 4s.	£. 15s.	£. 20s.	£. 25s.	£. 30s.	£. 35s.	£. 40s.	£. 45s.	£. 50s.	£. 55s.	£. 60s.	£. 65s.
£. 1. 10. 0. - 7 8 - 11 10	£. 1. 15. 0. - 7 8 - 11 10	£. 2. 0. 0. - 7 8 - 11 10	£. 2. 5. 0. - 7 8 - 11 10	£. 3. 0. 0. - 7 8 - 11 10	£. 3. 5. 0. - 7 8 - 11 10	£. 4. 0. 0. - 7 8 - 11 10	£. 4. 5. 0. - 7 8 - 11 10	£. 5. 0. 0. - 7 8 - 11 10	£. 5. 5. 0. - 7 8 - 11 10	£. 6. 0. 0. - 7 8 - 11 10	£. 6. 5. 0. - 7 8 - 11 10
18 27 6 - 6 8 - 3 9 1	20 11 10 - 6 8 - 3 9 1	22 5 10 - 6 8 - 3 9 1	23 15 3 - 6 8 - 3 9 1	25 0 3 - 6 8 - 3 9 1	26 5 3 - 6 8 - 3 9 1	28 0 3 - 6 8 - 3 9 1	29 5 3 - 6 8 - 3 9 1	31 0 3 - 6 8 - 3 9 1	32 5 3 - 6 8 - 3 9 1	34 0 3 - 6 8 - 3 9 1	35 5 3 - 6 8 - 3 9 1
34 3 9 1	36 1 3 9 1	38 0 3 9 1	40 0 3 9 1	42 0 3 9 1	44 0 3 9 1	46 0 3 9 1	48 0 3 9 1	50 0 3 9 1	52 0 3 9 1	54 0 3 9 1	56 0 3 9 1

£. 100,000.	£. 125,000.	£. 150,000.	£. 175,000.	£. 200,000.	£. 225,000.	£. 250,000.	£. 275,000.	£. 300,000.	£. 325,000.	£. 350,000.	£. 375,000.
£. 300.	£. 1,000.	£. 1,200.	£. 1,400.	£. 1,600.	£. 1,800.	£. 2,000.	£. 2,200.	£. 2,400.	£. 2,600.	£. 2,800.	£. 3,000.
£. 1. 10. 0. - 7 8 - 11 10	£. 1. 15. 0. - 7 8 - 11 10	£. 1. 20. 0. - 7 8 - 11 10	£. 1. 25. 0. - 7 8 - 11 10	£. 1. 30. 0. - 7 8 - 11 10	£. 1. 35. 0. - 7 8 - 11 10	£. 1. 40. 0. - 7 8 - 11 10	£. 1. 45. 0. - 7 8 - 11 10	£. 1. 50. 0. - 7 8 - 11 10	£. 1. 55. 0. - 7 8 - 11 10	£. 2. 0. 0. - 7 8 - 11 10	£. 2. 5. 0. - 7 8 - 11 10
1,000 15 6 - 13 4 - 3 9 1	1,043 7 8 - 13 4 - 3 9 1	1,086 9 - 13 4 - 3 9 1	1,129 10 10 - 13 4 - 3 9 1	1,172 11 4 - 13 4 - 3 9 1	1,215 12 8 - 13 4 - 3 9 1	1,258 13 2 - 13 4 - 3 9 1	1,301 14 6 - 13 4 - 3 9 1	1,344 15 0 - 13 4 - 3 9 1	1,387 16 4 - 13 4 - 3 9 1	1,430 17 8 - 13 4 - 3 9 1	1,473 19 2 - 13 4 - 3 9 1
1,473 19 1	1,516 4 3	1,559 5 7	1,602 7 1	1,645 8 5	1,688 10 0	1,731 11 4	1,774 12 8	1,817 14 2	1,860 15 6	1,903 17 0	1,946 18 4

namely, and the following made:

£. 1. 10. 0.	£. 1. 15. 0.	£. 2. 0. 0.	£. 2. 5. 0.	£. 3. 0. 0.	£. 3. 5. 0.	£. 4. 0. 0.	£. 4. 5. 0.	£. 5. 0. 0.	£. 5. 5. 0.	£. 6. 0. 0.	£. 6. 5. 0.
£. 1. 10. 0. - 7 8 - 11 10	£. 1. 15. 0. - 7 8 - 11 10	£. 2. 0. 0. - 7 8 - 11 10	£. 2. 5. 0. - 7 8 - 11 10	£. 3. 0. 0. - 7 8 - 11 10	£. 3. 5. 0. - 7 8 - 11 10	£. 4. 0. 0. - 7 8 - 11 10	£. 4. 5. 0. - 7 8 - 11 10	£. 5. 0. 0. - 7 8 - 11 10	£. 5. 5. 0. - 7 8 - 11 10	£. 6. 0. 0. - 7 8 - 11 10	£. 6. 5. 0. - 7 8 - 11 10
1,000 15 6 - 13 4 - 3 9 1	1,043 7 8 - 13 4 - 3 9 1	1,086 9 - 13 4 - 3 9 1	1,129 10 10 - 13 4 - 3 9 1	1,172 11 4 - 13 4 - 3 9 1	1,215 12 8 - 13 4 - 3 9 1	1,258 13 2 - 13 4 - 3 9 1	1,301 14 6 - 13 4 - 3 9 1	1,344 15 0 - 13 4 - 3 9 1	1,387 16 4 - 13 4 - 3 9 1	1,430 17 8 - 13 4 - 3 9 1	1,473 19 2 - 13 4 - 3 9 1
1,473 19 1	1,516 4 3	1,559 5 7	1,602 7 1	1,645 8 5	1,688 10 0	1,731 11 4	1,774 12 8	1,817 14 2	1,860 15 6	1,903 17 0	1,946 18 4

ADMINISTRATIONS.

£. 1,000.	£. 1,500.	£. 2,000.	£. 2,500.	£. 3,000.	£. 3,500.	£. 4,000.	£. 4,500.	£. 5,000.	£. 5,500.	£. 6,000.	£. 6,500.
£. 3.	£. 15s.	£. 20s.	£. 25s.	£. 30s.	£. 35s.	£. 40s.	£. 45s.	£. 50s.	£. 55s.	£. 60s.	£. 65s.
£. 1. 10. 0. - 7 8 - 11 10	£. 1. 15. 0. - 7 8 - 11 10	£. 2. 0. 0. - 7 8 - 11 10	£. 2. 5. 0. - 7 8 - 11 10	£. 3. 0. 0. - 7 8 - 11 10	£. 3. 5. 0. - 7 8 - 11 10	£. 4. 0. 0. - 7 8 - 11 10	£. 4. 5. 0. - 7 8 - 11 10	£. 5. 0. 0. - 7 8 - 11 10	£. 5. 5. 0. - 7 8 - 11 10	£. 6. 0. 0. - 7 8 - 11 10	£. 6. 5. 0. - 7 8 - 11 10
12 3 9 1 - 3 9 1	14 3 9 1 - 3 9 1	16 3 9 1 - 3 9 1	18 3 9 1 - 3 9 1	20 3 9 1 - 3 9 1	22 3 9 1 - 3 9 1	24 3 9 1 - 3 9 1	26 3 9 1 - 3 9 1	28 3 9 1 - 3 9 1	30 3 9 1 - 3 9 1	32 3 9 1 - 3 9 1	34 3 9 1 - 3 9 1
34 3 9 1	36 1 3 9 1	38 0 3 9 1	40 0 3 9 1	42 0 3 9 1	44 0 3 9 1	46 0 3 9 1	48 0 3 9 1	50 0 3 9 1	52 0 3 9 1	54 0 3 9 1	56 0 3 9 1

£. 100,000.	£. 125,000.	£. 150,000.	£. 175,000.	£. 200,000.	£. 225,000.	£. 250,000.	£. 275,000.	£. 300,000.	£. 325,000.	£. 350,000.	£. 375,000.
£. 300.	£. 1,000.	£. 1,200.	£. 1,400.	£. 1,600.	£. 1,800.	£. 2,000.	£. 2,200.	£. 2,400.	£. 2,600.	£. 2,800.	£. 3,000.
£. 1. 10. 0. - 7 8 - 11 10	£. 1. 15. 0. - 7 8 - 11 10	£. 1. 20. 0. - 7 8 - 11 10	£. 1. 25. 0. - 7 8 - 11 10	£. 1. 30. 0. - 7 8 - 11 10	£. 1. 35. 0. - 7 8 - 11 10	£. 1. 40. 0. - 7 8 - 11 10	£. 1. 45. 0. - 7 8 - 11 10	£. 1. 50. 0. - 7 8 - 11 10	£. 1. 55. 0. - 7 8 - 11 10	£. 2. 0. 0. - 7 8 - 11 10	£. 2. 5. 0. - 7 8 - 11 10
1,000 15 6 - 13 4 - 3 9 1	1,043 7 8 - 13 4 - 3 9 1	1,086 9 - 13 4 - 3 9 1	1,129 10 10 - 13 4 - 3 9 1	1,172 11 4 - 13 4 - 3 9 1	1,215 12 8 - 13 4 - 3 9 1	1,258 13 2 - 13 4 - 3 9 1	1,301 14 6 - 13 4 - 3 9 1	1,344 15 0 - 13 4 - 3 9 1	1,387 16 4 - 13 4 - 3 9 1	1,430 17 8 - 13 4 - 3 9 1	1,473 19 2 - 13 4 - 3 9 1
1,473 19 1	1,516 4 3	1,559 5 7	1,602 7 1	1,645 8 5	1,688 10 0	1,731 11 4	1,774 12 8	1,817 14 2	1,860 15 6	1,903 17 0	1,946 18 4

and the above Fees for Cancellations substituted.

0.72.

IN the matter of the Commission appointed to inquire into the DUTIES, SALARIES and EMOLUMENTS of the several OFFICERS, CLERKS and MINISTERS of JUSTICE in all Temporal and Ecclesiastical Courts in Ireland.

AFFIDAVIT of Mr. Joshua Cunningham, of 11th May 1837.

Joshua Cunningham, of Lower Rutland-street, in the city of Dublin, in Ireland, aged thirty years and upwards, maketh oath and saith, That he hath lately inspected and read over the printed examination and evidence of John Swift, one of the Proctors of the Court of Prerogative in Ireland, as taken in Dublin, before the Commissioners appointed in this matter, on the 11th, 13th, 18th and 27th days of November in the year 1829; the examination and evidence so printed being the same as was ordered to be printed, and since made public, pursuant to an Order of the House of Commons, bearing date the 27th day of April 1830, and called "The Nineteenth Report on Courts of Justice in Ireland," and to which, or a copy thereof, this deponent has, at the time of making this affidavit, affixed his initials.

Saith, That although he is described in the said examination and evidence, as well as in the Report of the Commissioners thereon, as Joseph Cunningham, this deponent is the individual meant and referred to therein, a mistake having occurred in describing him as Joseph instead of Joshua.

Saith, That the evidence given by the said John Swift before said Commissioners, as it is reported in said printed examination and evidence, is untrue and unfounded in many respects, to this deponent's knowledge. Saith, that according to the evidence so given by the said John Swift, and in his answer to query 25, in the Appendix to the Report in said matter, being at page 186 thereof, he is reported to have given evidence in the words and to the effect following:

"Mr. Hawkins (the Deputy register) has every opportunity, and I know has often availed himself of it, of expediting his own business in preference to the profession generally. I shall instance one very particular case, which I had from a clerk: Mr. Hawkins was employed to extract a Probate for some person in Dame-street, I think, belonging to the office of Mr. Bruce; at this time the Judge being absent, he was not only entrusted with the seal of the Court, but was empowered to swear Executors and Administrators; he took the seal of the Court with him, swore the party, obtained the necessary stamp, filled up the article in the office of the person who employed him, sealed and gave it to him. I think the clerk who told me this was Mr. Joseph Cunningham."

This deponent saith, That he never at any time, either before said examination or since, either directly or indirectly, informed the said Swift to the effect so stated by him; nor had he at any time any conversation whatsoever with the said Swift upon the subject of said Swift's evidence mentioned, save and except that deponent, since the publication of said evidence, informed him that it was probable he would be obliged, in common justice to send Mr. Hawkins, to reply by affidavit to said Swift's statements. Neither does deponent know of any case having ever occurred as stated by the said Swift. Saith, that according to the said printed Report and Evidence, the said John Swift, in answer to query 28 of his examination, and in page 190, is set forth as having delivered evidence in the words following:

"I have been informed by Mr. Joseph Cunningham (meaning deponent), one of the clerks in the office, that in cases in which Mr. Hawkins is employed, and when a caveat is expected, the clerk will be directed to bring the article to the Seal, and if the Judge is not at home, the directions are, that the article in question shall not be returned to the office, giving any person who inquires relative to it to understand that it has been sealed: this I heard on the nineteenth day of February one thousand eight hundred and twenty-eight from Mr. Cunningham, as appears by my day-book, in which I made an entry of the conversation."

This deponent saith, That he never, either directly or indirectly, on the said eighteenth day of February one thousand eight hundred and twenty-eight, or at any other time whatsoever, informed the said John Swift in manner or to the effect so stated by him; but saith, that though now nearly fourteen years in the office of the said John Hawkins, as Deputy-register of the Court of Prerogative in Ireland, he never knew of such a case occurring as is described and stated by said Swift, or any direction or directions given as stated by him, either by the said John Hawkins or any one in his office. Saith he admits it to be true that in cases where Letters of Administration were required in a great hurry by a Proctor or Solicitor, and that circumstances arose which made their obtaining essential for the saving of the assets in the matter, or other sufficient cause, after fiat was made thereon by the Judge, the said John Hawkins was in the habit of signing the instrument as registrar, and forwarding same by a confidential clerk to the Judge's house, to have the seal affixed thereto; but saith that it was always the invariable practice and made a strict rule with the said John Hawkins, that should any person whatsoever apply at the office with a caveat previous to the sealing and delivering out of the Letters of Administration or Probate, same would be received and recorded, and would stop the issuing of such Probate or Administration.

Joshua Cunningham.

Sworn before me this eleventh day of May One thousand eight hundred and thirty-seven, at my house in Merion-square, Dublin.

J. Leslie Foster,

Third Baron of the Court of Exchequer in Ireland.

R E P O R T

FROM THE

SELECT COMMITTEE

APPOINTED

TO ENQUIRE INTO THE STATE OF THE

PREROGATIVE AND ECCLESIASTICAL

COURTS IN IRELAND;

WITH THE

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, to be Printed,
22 June 1837.

[Price 1s. 2d.]